

RAJASTHAN HIGH COURT

State of Rajasthan

Vs.

Gauri Shanker Mandavewala

D.B.C. Spl. Appeal No. 497 of 2001
(Dr. Ar. Lakshmanan C.J., and Bhagwati Prasad, J.)

06.07.2001

JUDGEMENT

Dr.AR. Lakshmanan, C. J.

1. This appeals directed against the order passed by Hon'ble M. Rajesh Balia, J. in Writ Petition No. 1573/2001 dated 1st May, 2001 dismissing the writ petition as premature with an observation that in case the respondents decide to place the petitioner under suspension, on the charges leveled against him under the two notices dated 8th March, 2001 and 4th April, 2001 or by serving any new notices after passing of the order in the writ petition, the same may not be implemented for a period of one month from the date of service of that order upon the petitioner so as to enable him to approach appropriate forum, by way of appropriate proceedings. In this context the learned Judge has also placed reliance on the earlier order passed by another learned single Judge of this Court in Writ Petition No. 1119/2001 wherein this Court while dismissing the writ petition on 16-1-2001, made similar observations holding that interfering in the writ petition at that stage being premature. The learned single Judge made a further observation to the effect that incase the respondents think it fit to place the petitioner under suspension, on the charge leveled against him in the impugned notice, then the same may not be implemented for a period of one month from the date of service of that order upon the petitioner, so as to enable him to approach appropriate forum by way of appropriate proceedings.

2. In the instant case, Mr. Yashwant Mehta, learned counsel for the appellant, submitted that the order of the learned single Judge deciding the writ petition, would restrain the future action by the State and that such a direction given by the Hon'ble single Judge is contrary to the provisions of sub-section (4) of Section 63 of the Act

of 1959 and hence the said order deserves to be quashed and set aside.

3. Section 63 of the Rajasthan Municipalities Act 1959 deals with the removal of Members. The State Government notwithstanding the provisions under Section 63, sub-section (2) and (3) of the said section may place under suspension a member against whom proceedings have been commenced under this section, until the conclusion of the inquiry and the passing of the final order and the member so suspended shall not be entitled to take part in any proceedings of the board or otherwise perform the duties of a member thereof.

4. The expression "Notwithstanding the foregoing provisions of this section" has been used in this sub-section to give it an overriding effect.

5. The following conditions for suspension of a member, or Chairman or the Vice Chairman of the Board, are available to the State Government:-

(1) The State Government may place under suspension a member against whom proceedings have been commenced under this Section (2) until the conclusion of the inquiry and the passing of the final order and (3) the suspended member shall not be entitled to take part in any proceedings of the Board, or otherwise perform the duties of a member of the Board.

6. The order of suspension is effective till the term of the Board, although inquiry may still continue under Section 63A, and such a person need not be suspended if reelected as member of Board in fresh elections. In the instant case. It is seen from the order which clearly reveals the conduct of the authorities concerned.

7. In this case No Confidence Motion against the petitioner having failed on 7th March, 2001, a notice of allegations calling upon his explanation was served on the petitioner on the very next day, i.e. 8th March, 2001. A reply was filed by the petitioner apprehending that the proceedings appear to be only mechanical fulfillment of the requirement of the provisions of affording an opportunity of hearing to suspend the petitioner and to remove him from the working. Therefore, he filed an earlier writ petition No. 1119/2001 in which a caveat has been lodged by the respondents therein, against the possible challenge to the said notice. A copy of the writ petition has been served on the respondents on 20th March, 2001. Soon after the petitioner served them with the copy of the petition No. 1119/2001, the impugned notice dated 4th April,

2001 leveling new charges which was received by him on 7th April, 2001 and was duly replied to vide letter dated 10th April, 2001. It is also submitted before the learned Single Judge that in view of the decision in Writ Petition No. 1119/2001 dated 16-1-2001 dismissing the writ petition as pre-mature with other observations, permitting the petitioner to approach the appropriate forum by initiating appropriate proceedings and before the order could be made in the earlier writ petition, the present notice has been issued by the respondents herein taking away from the petitioner the protective umbrella of one month granted to him under the earlier order for availing the remedy against that order.

8. In the foregoing circumstances, the learned Judge, while dismissing the writ petition as premature, has granted permission to the petitioner herein to approach the appropriate forum by initiating the appropriate proceedings and in the meanwhile, restraining the respondents from implementing the order of suspension, if any, passed, for a period of one month from the date of service of that order.

9. In our opinion, the order passed by the learned Single Judge, does not call for any interference at this stage. The learned Judge has only granted permission to the petitioner herein to approach the appropriate forum as and when the suspension order is served on him. The learned Judge has not stayed the order of suspension for ever and that the same has been suspended only for a limited period of one month. In our opinion, the contention put forward by the learned counsel for the petitioner that the order passed by the learned single Judge, granting stay of the suspension order, if any to be passed, is beyond the scope of the writ petition, has no force. The order also does not withhold the rights of the respondents herein in proceeding further in accordance with law. The order, in our opinion, will not amount to restraining the authority of the respondent herein for any future action. We also make it clear that this one months period granted by the learned single Judge will have no future application and we make it further clear that the said direction is applicable and is confined only to the case on hand.

10. The writ appeal, therefore, fails and is dismissed.

Appeal dismissed.