

RAJASTHAN HIGH COURT

Suresh Chandra Singhal

Vs.

State of Rajasthan

S. B. Civil Writ Petn. Nos. 3920, 5025, 5190, 4451 etc. etc. of 2004
(K.S. Rathore, J.)

27.07.2004

ORDER

K.S. Rathore, J.

1. Since in all these aforesaid writ petitions common question of law is involved, and the same are being decided by this common order.

2. The facts of the case of Suresh Chandra Singhal are as under :-

The petitioner was elected as a member of the Municipal Board, Gangapur City on 20-8-2000 from Ward No. 9. Thereafter, he was elected as a Chairman of the Municipal Board, *Gangapur City* on 22-8-2000.

3. The controversy arose only when the notice dated 16-2-2004 came to be issued by the Deputy Secretary, Department of Local self, *Jaipur*, to the petitioner by which five charges were leveled against the petitioner on the basis of the alleged inquiry report of the Regional Dy. Director and the explanation of the petitioner was sought within a period of seven days of the notice failing which proceedings under Section 63 of the Rajasthan Municipalities Act, 1959 (for short, the Act of 1959) would be initiated against the petitioner.

4. On receipt of the notice, the petitioner submitted an application on 1-3-04/19-3-2004 for supplying him the copies of the alleged complaint and the enquiry report. It is alleged by the learned counsel for the petitioner that the copies which were asked for, were never supplied to the petitioner and without having the requisite copies which were asked for, the interim reply to the notice dated 20-4-2004 was submitted by the petitioner.

5. It is also submitted that after filing the reply to the notice, the petitioner was able to procure the enquiry report dated 7- 2- 2004.

6. Learned counsel for the petitioner also referred the charges levelled against the petitioner vide notice dated 16-2-2004 and submits that the charges which are levelled against the petitioner does not fall under the category mentioned in Section 63(1),(a), (b), (c) and (d) of the Act of 1959 and all the charges are frivolous and baseless.

7. The order dated 9-6-2003 is challenged by the petitioner on the ground that the order of suspension has been passed by the respondent without following the provisions of Section 63 of the Act of 1959.

8. By referring Section 63 the learned counsel for the petitioner further referred that the mandatory provisions of this Section should be complied with before passing the order of suspension dated 9-6-2004. And before passing the suspension order neither any charge/statement of allegation is served upon the petitioner nor any notice has been served to the petitioner to call for the explanation.

9. Learned counsel for the petitioner further submits that Section 63 empowers only the State Government to hold the enquiry and no other authority had that power to hold the enquiry. Since the State Government has not passed any order for holding enquiry and the enquiry held by the Dy. Director at the instance of Director cannot be termed as enquiry in terms of Section 63(1)(a) of the Act of 1959.

10. It is further submitted that in the instant case no enquiry has been conducted and no report has been received under the provisions of Section 63(2) of the Act of 1959 and the Government has not applied its mind and no opportunity has been afforded to the petitioner for his explanation. It is also alleged that prior to passing of the suspension order dated 9-6-2004, preliminary enquiry report was not with the Government and in absence of any preliminary enquiry it cannot be said that the order of suspension is passed after applying its mind and after considering the preliminary enquiry. The facts of other cases are also mentioned here under:

In the case of Anni Devi Uday preliminary enquiry report was submitted on 15-6- 2004 and show cause notice was issued on 5-7-2004. Suspension order against the petitioner was passed on 7-8-2004 and the case was referred to law department for judicial enquiry.

11-12. In the case of Mubarak Mansoori preliminary enquiry was filed on 19-2- 2004 and show cause notice was issued calling for explanation on 12-5-2004. Reply to show

cause notice was filed on 31-5-2004. Suspension order was passed on 12-7-2004. Referred to law department for judicial enquiry.

13. In the case of Shanti Devi Mishra preliminary enquiry report was filed on 24- 6- 2004 and show cause notice was filed on 9-7-2004. Suspension order was passed on 9-7-2004 and the case was referred to law department for judicial enquiry on 15- 7- 2004.

14. In the case of Chand Mal Uday preliminary report was filed on 20-3-2004 and show cause notice was issued on 12-5-2004. Reply to show cause notice was not filed. Suspension order was passed on 23-7-2004. Referred to law department for judicial enquiry.

15. In the case of Smt. SarojJadam preliminary enquiry report was filed on 20-3-2004 and show cause notice was issued calling for explanation on 12-5- 2004. Reply to the show cause notice was filed on 28-5-2004. Suspension order was passed on 17-7-2004, Referred to law department for judicial enquiry on 22-7-2004.

16. Since all the learned counsel appearing on behalf of the respective parties have placed reliance on common judgments and more particularly, the case of Jan Mohd. reported in (1992) 2 WLC 463 : (AIR 1993 Rajasthan 86).

17. The Division Bench of this Court in this case while dealing with the legal question with regard to Section 63 of the Rajasthan Municipalities Act has observed as under :-

"It has been contended that no proceedings can be said to have been commenced against the petitioner as per Section 63 of the Act. However, if it is held that they have commenced then the provisions of Section 63(4) of the Act. However, if it is held that they have commenced then the provisions of Section 63(4) of the Act are *ultra vires* of the provisions of Article 14 of the Constitution. The suspension order has been passed for an oblique motive and ulterior considerations. According to the petitioner, the suspension order has penal consequences inasmuch if the aforesaid order stands, the petitioner will not be allowed to take part in the proceedings of the Board by virtue of the provisions of Section 63(4) of the Act and it will shatter his image in the public at large. It has been alleged that ShriBhanwarlal Sharma, Minister of Indira GanghiNahar Project has won the assembly elections from the SardarshaharConstituency and he belongs to the BhartiyaJanta Party (ruling party in the State) and is keenly interested in his removal. He has already

threatened the petitioner that he will remove him from the post of Chairman of the Municipal Board, Sardarshahar. According to the petitioner, irregularities in the work cannot be construed as misconduct. He has therefore, prayed for the following reliefs :

(i) that by an appropriate writ, order or direction in the nature of mandamus or certiorari, Section 63(4) of the Act be struck down and declared void;

(ii) further by an appropriate writ, order or direction the impugned order Annexure- 3 dated 10-1-1992 may kindly be quashed and set aside;

(iii) further by an appropriate writ, order or direction non-petitioners may be directed to produce resolution of the Board and the enquiry report;

(iv) further by an appropriate writ, order or direction, non-petitioners may be restrained from containing (sic) any enquiry in respect of allegations and Anns. 1 and 2 may be quashed and set aside;

(v) Pending the petition, if any order is passed, prejudicial to the interest of the petitioner, same may be quashed and set aside;

(vi) Any other appropriate writ, order or direction to which the petitioner may be entitled to in the facts and circumstances of the case may be passed."

18. The Division Bench further opined that -

"It is not a case of divesting rights, which are vested. It is a case of temporary removal of a person pending proposed enquiry, which may be initiated against him for his removal. That enquiry in a regular manner has to be proceeded with only after obtaining his explanation and after considering his explanation if it is found that the charges are to be referred to the Judicial Officer then the regular enquiry starts. Prior to that, if any complaint is made as regards his working, which may be covered by clauses (c) and (d) of Section 63(1) of the Act then on that complaint alone no suspension can take place."

19. The Division Bench further opined that -

"The State Government cannot suspend a delinquent at its will. A preliminary enquiry has to be conducted by a responsible Officer and after considering the preliminary enquiry report, if the State Govt. is satisfied that the charges require a thorough probe, and continuation in Office of the delinquent may cause great

loss to the finances of the Institution, it may decide to refer those charges to a Judicial Officer and before those charges are referred, the delinquent has to be served with a show cause notice along with statement of allegations and he can also be suspended from his office at the same time. This procedure, in our opinion is wholly just and reasonable."

20. The Division Bench of this Court further opined as under :-

"That when matter of suspension is left to the objective satisfaction of the Govt. the normal rule so that it is not necessarily justifiable before the High Court and the Court cannot look into the question as to whether the materials are adequate or inadequate from its point of view. But, the factum of satisfaction can always be questioned before the Court and the party challenging the order of suspensions can always show before the Court that the professed satisfaction is no satisfaction at all either because it was formed on extraneous or irrelevant circumstances or that there was a total lack of application of mind to the question as to whether it is necessary or desirable to suspend the Officer. The facts and circumstances to be considered must be those which existed on the date of the conclusion of the opinion or arriving at the satisfaction and actually weighed with the authority while passing the impugned order and facts which have come to transpire subsequently or which have been subsequently unearthed as existing even at the time of the conclusion or formation of opinion, though not considered and taken into account, cannot at all be relied on the support of the impugned order. While the Court can examine as to whether the opinion or satisfaction was formed at all, Court cannot substitute its own satisfaction for that of the authority. Though the materials placed may not satisfy the Court, the task of the Court is only limited to an investigation as to whether there was any foundation of fact at all or whether irrelevant and extraneous circumstances have weighed with the authority while passing the impugned order. The fact that different formation of opinion or satisfaction is possible for the Court on the very same facts and circumstances is not a ground to quash the order in question. May be, the reason, given are in general terms. Yet the Court should not exclude reasons which may fairly fall within them, allowance being made for difficulties in expression."

21. While considering the case of UgamseeModi's in the case of Mohanlal's case, the Division Bench of this Court further arrived at the conclusion as under :-

"Thus in UgamseeModi's case which came up for consideration in Mohan Lal's case (supra), the Division Bench of this Court has categorically held that before suspending a Member/Chairman of the Municipal Board/Council, what is essential is that the preliminary enquiry report should be considered and after application of mind on the preliminary enquiry report, if the State Govt. considers it fit that the matter needs further enquiry, then a show cause notice has to be issued to such Member/Chairman of the Municipal Board/Council why specific charges be not framed against him and they be referred to the Judicial Officer and simultaneously, the suspension order can be issued because as soon as there is application of mind on the report that has been submitted by the Enquiry Officer, when the Govt. decides what action has to be taken and that is the stage when the proceedings commence against the petitioner."

22. The Division Bench further opined as under :-

"It has never been the intention of the legislature that two opportunities should be provided one before passing the order of suspension and the other before framing of the charges. That will certainly result in duplicity. We feel inclined to accept this submission of Mr. Udawat, the learned Addl. Advocate General that it has not been the intention of the legislature to grant any pre-decisional hearing to the holder of a public Office before he is suspended. What is required is that before he is suspended, a preliminary enquiry should be held by the responsible officer and after the report is received and the State Government applied its mind and comes to the conclusion that a further probe is essential for the removal of the holder of electoral public office then it has to issue a notice under Section 63(2) of the Act to show cause why definite charges be not framed and all these charges should not be referred to a Judicial Officer and simultaneously, that delinquent holder of Public Office can also be suspended."

23. The Division Bench finally observed as under :-

"We are firmly of the view that the proceedings against a Chairman or member of the Municipal Board commence when the preliminary enquiry report submitted to the Government is considered by the Government and the Government applies its mind to it and comes to the conclusion that a further probe in the matter is essential. For the removal of the holder of an elected public office that is Chairman or Member of the Municipal Board, if the Govt. decides to issue a notice to the incumbent under Section 63(2) of the Act to the

delinquent Chairman or the Member of the Municipal Board to show cause why definite charges be not framed against him and be referred to a Judicial Officer, that is the stage where the proceedings start against the Chairman/Member of the Municipal Board and the State Govt. has power to suspend the Chairman or a Member of a Municipal Board simultaneously when it decides to issue him a notice of show cause under Section 63(2) of the Rajasthan Municipalities Act. The suspension of a Chairman or a Member of the Municipal Board pending enquiry being an interim measure the suspension does not result in civil or evil consequences and it is not penal in character. Enough safeguards have been provided in the Section so that no arbitrary, capricious or *mala fide* suspension may take place. However, we will like to add a word of caution that the holders of these elective public posts cannot be equated with Govt. servants and, therefore, before a holder of an elected post is suspended, the Government must have sufficient reasons to do so. Care should be taken that such suspensions should (not ?) be arbitrary and the suspensions of such elected representatives should not be brought about for political motives or consideration".

24. As in the judgment of Division Bench rendered in Jan Mohd. case, the Division Bench has considered the case of *UgamseeModi v. State of Rajasthan reported in*¹

25. In Ugamsee case, the main ground of challenge to the order passed by the State on the ground that the State Government has no jurisdiction to suspend the petitioner under sub-section (4) of Section 63 of the Municipalities Act in the absence of any proceeding having commenced under this section. The Division Bench in the case UgamseeModi has held as under:-

"It is true that a suspension order within the meaning of sub-section (4) of Section 63, can be only made if proceedings have been commenced under the section. The point of importance is whether in the circumstances of this case it can be argued on behalf of the State that proceedings had commenced under the section. The facts indicate that there were certain complaints made against the petitioner, apart from the charges on which an inquiry had been made earlier by the Legal Remembrancer. Those complaints appear to have been prima facie, inquired into by the Collector and by the Inspector General of Police who asked Government to accord sanction for the prosecution of the petitioner; and the Government after applying its mind to those reports thought that action was called for".

26. In the cases *Ajmer Singh Yadav v. State of Rajasthan* reported in ² and the case of *Rameshwari Devi Meena v. State* reported in ³ this Court has also dealt with the scope of Section 63 wherein the view taken in the case of Jan Mohd. and Ugamsee has been adopted by the Court in the aforesaid judgment.

27. The case of *Mohan Lal v. State of Rajasthan* reported in ⁴ is also referred wherein this Court while dealing with Section 63 has observed as under :-

"The issue therefore, in short is whether the petitioner was suspended on commencement of the proceedings against him under Section 63. If so, the order of suspension cannot be held to be invalid. In *Ugamsee Modi v. State of Rajasthan* a Division Bench of this Court consisting of the Chief Justice and Mr. Justice Shingal held, "proceedings under sub-section (2) of Section 63 of the Act, must be taken to have commenced against the petitioner when on those allegations he was called upon to show cause and to explain his conduct."

28. Having gone through the judgments referred before me it is clear that in all the judgments since Ugamsee case to Jan Mohd. case there is consistent view of this Court that if the State Government is satisfied that the charges require a thorough and fair probe, and continuation in office of the delinquent may cause great loss to the finances of the institution, it may decide to refer those charges to a judicial officer and before those charges are referred, the delinquent to be served with a show cause notice along with statement of allegations and he can also be suspended from this office at the same time meaning thereby that both the courses i.e. serving a show cause notice and putting the delinquent on suspension can be taken simultaneously. Therefore, the petitions so far challenge to suspension order are concerned, not maintainable and deserves to be dismissed being devoid of merit.

29. Now the question remains that after suspension the enquiry could be handed over to the judicial officer. In the judgment of *Nandlal v. State of Rajasthan* reported in ⁵ this Court while dealing the competence of Section 63 has observed that since the enquiry is conducted by Senior Judicial Officer of the State Government and this Court cannot subscribe to the view that the person like the petitioner in case he remains the Chairman of the Board would cause any embarrassment to the Enquiry Officer or that the enquiry would be prejudiced in any way. The objective satisfaction of the State has to be taken notice of by the Court though the Court would not superimpose its discretion as held in the Division Bench decision in the case of Jan Mohd. In NandLal's case, this Court without examining and without going into the

correctness of the charges and the reply filed by the petitioner since it was subject-matter of a judicial enquiry at the hands of Joint Legal Remembrancer and the Court refrain from commenting on it but observed that in view of the settled principles of law this Court would not interfere in suspension orders lightly since suspension is only a deprivation of one's status and that too temporarily, it does not amount to penalty and is normally ordered when the truth of the allegations of misconduct of corruption is under scrutiny and following the settled propositions of law in Jan Mohd's case further observed that the elected representative of the public cannot be equated with that of the Government employees since these offices are held by the incumbent for a fixed period of time and the Court would not shirk its responsibility to intervene in the matter as and when a glaring case of the kind is brought before it.

30. So far as deviation from settled proposition of law is concerned, I am not agree with the observation made by this Court in the case of NandLal. Considering this judgment also I thoroughly examined the factual aspect of the case of the aforesaid writ petitions and I find not a single case where any glaring mistake has been committed by the respondent State and since there is no sufficient material for intervention of this Court and as held in this case also that such power should be used very sparingly and that too with utmost caution and care and the Court would not provide to the political rivals to use its platform to serve their personal ends and settle their scores. I am also of the considered opinion not to interfere in the aforesaid matters and on factual aspect also I find no mistake in passing the order of suspension by invoking power of Section 63 by the respondent State.

31. Consequently, all the writ petitions fails being devoid of merit and deserves to be dismissed.

32. However, the respondent State is expected to conduct the judicial enquiry expeditiously looking to the fact that all the petitioners are elected representative of the public for the fixed period and to frustrate their rights the Government should not prolong the enquiry indefinitely. I further observe that the State Government after referring the enquiry to the judicial officer should lay down time bound programmer as envisaged in the Rules and the judicial officer should take note that the elected representative are having a limited period and the enquiry should be conducted in all the writ petitions expeditiously.

33. With these observations, the writ petitions fails and are hereby dismissed with no orders as to costs.

Petitions dismissed.

Cases Referred.

1. 1962 Raj LW 184
2. 1986 Raj LR 16
3. 1991 (1) 420 (sic)
4. 1963 Raj LW 209
5. 1996 (2) WLC (Raj) 497: (1996 AIHC 1818)