

S. Buta Singh declared elected if as a result of a material irregularity the result of his election has been materially affected and, therefore, I cannot quash that portion of the order which must be taken to order a fresh election in regard to the seat held by Jagdev Singh and as a result there will be a re-election as far as the seat of Jagdev Singh is concerned.

v.
Itbar Singh,
etc.

Kapur, J.

This is not a case in which the respondent should be burdened with any costs because it is no fault of theirs that the order complained of was made by the Prescribed Authority. I would, therefore, leave the parties to bear their own costs.

CIVIL WRIT

Before Kapur J.

LABH SINGH FAKHAR,—*Petitioner*

versus

THE STATE OF PUNJAB,—*Respondent*

Civil Writ No. 101 of 1954

1954

Nov., 24

Punjab Municipal Act (III of 1911) Section 16, 22,—Removal of member from membership of the Committee—Powers of Government—Condition precedent—High Court when can interfere under Article 226 of the Constitution of India.

Held, that all that the law requires is that if the State Government are of the opinion that there has been flagrant abuse of position by a member, he can be removed provided the reasons for his proposed removal are communicated to him and he is given an opportunity of tendering an explanation in writing. The intention of the Legislature is clear from the words of the section which does not require an inquiry to be held, and all that it requires is that the person against whom action is proposed to be taken should be allowed to make a representation in writing. It is not open to this court to interfere with the discretion of the Government if the forms of law have been complied with in that a notice as required under section 16(1)(e) and section 22 of the Municipal Act was given to the petitioner, and it is not open to the Court to go into the sufficiency of the reasons except on the ground of *mala fide*.

Vijaya Ragava v. The Secretary of State for India in Council (1), *The State of Bombay v. Atma Ram* (2), *Nakkuda Ali v. M.F.De S. Jayarante* (3), *Government of the United Provinces v. Radhey Lal* (4), referred to.

Petition under Article 226 of the Constitution of India, praying that a writ of mandamus be issued to the respondents ordering them to cancel their notification No. 2003-CC-54/6890, dated the 26th March 1953, and allow the petitioner to function as a member and Vice-President of the Municipal Committee, Qadian, for his full term of office. Pending the decision of this case, new election or appointment of a member in place of the petitioner may be stayed. Any other order may be made which is just and proper in the circumstances of the case.

H. S. GUJRAL, for Petitioner.

S. M. SIKRI, Advocate-General, for Respondent.

ORDER

KAPUR, J.—This is a rule obtained by the petitioner for bringing the record to this Court and for quashing the order passed by the Punjab Government removing the petitioner from membership of the Municipal Committee of Qadian and disqualifying him for election for a period of five years.

Kapur, J.

The Municipal Committee consisted of a number of nominated members after the Muhammedan members had gone away from Qadian to West Pakistan. This Committee on the 29th June 1953 on being asked by the Deputy Commissioner passed a resolution for the extension of the Municipal (Executive Officers) Act, 1931, to the Municipal Committee of Qadian and it was proposed that the designation of the Secretary, Bhai Chuni Lal, be upgraded and he may work as Executive Officer on a salary of Rs. 250—15—400. There was a

(1) I.L.R. 7 Mad. 466
(2) A.I.R. 1951 S.C. 157
(3) 1951 A.C. 66
(4) I.L.R. 1948 All. 91

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new election and the members elected were gazetted on the 9th July, 1953. The election of Dr. Kidar Nath as President was gazetted on the 26th August 1953. In the meeting held on the 4th September 1953 under the chairmanship of the petitioner the resolution as to the extension of the Municipal (Executive Officers) Act was reversed by a majority of 5 to 8; the ninth member did not vote.

The petitioner Labh Singh ordered the suspension of Chuni Lal and he left for Batala taking his personal file and some municipal papers. This was on the 9th September 1953, and when he returned from Batala on the 10th September 1953 the petitioner is alleged to have forcibly taken the bundle containing *inter alia* the papers of the Municipality from Chuni Lal at the Railway Station. Chuni Lal also alleged that the petitioner had snatched Rs. 50. The petitioner was tried for an offence under section 392 Indian Penal Code, but the Magistrate by his order dated the 18th March 1953 held—

“There was a tussle going on between Labh Singh and Chuni Lal regarding the suspension of the latter. * * * *
As Labh Singh had merely snatched the *basta* from the complainant (Chuni Lal) without knowing that there were any personal belongings of Chuni Lal in the *basta*, he could not be held guilty under section 392, Indian Penal Code, as the intention to rob Chuni Lal would be completely lacking. * * * * There-
fore on technical grounds alone no case

is made out against the accused and I accordingly discharge him under section 253, Criminal Procedure Code, * * * * "

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At a meeting of the Municipal Committee, the order of suspension which was made by the petitioner as Vice-President was confirmed; one member remained neutral and one other member voted against the resolution.

On the 14th September 1953 Chuni Lal on being asked to hand over charge refused to do so on the ground that he had been directed by the Local Bodies Incharge not to hand over charge and the same day he wrote to the President explaining the circumstances why he had not complied with the order of handing over charge. Upon this the President "withheld the order of suspension" and on the 16th September 1953 the Deputy Commissioner suspended this resolution of suspension holding it to be *mala fide*, illegal, null and void and hence inoperative.

On the 28th December 1953 the petitioner was served with a notice by the Government which is Annexure 'B' calling upon him to show cause why he should not be removed from membership under section 16 (1) (e) and from Vice-Presidentship under section 22 of the Punjab Municipal Act, 1911, and be not disqualified for election for a period of five years. The three grounds given in the notice were—

- "1. That you charged false Travelling Allowance amounting to Rs. 25-6-0 from the Municipal funds for journeys performed by you in your personal capacity, without the permission of the Municipal Committee.

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2. That you, as Vice-President of the Municipal Committee, Qadian, *mala fide*, illegally and out of personal grudge suspended Shri Chuni Lal, Secretary of the Municipal Committee,—*vide* your order, dated 9th September, 1953. You did so without making the preliminary enquiry into the charges against Shri Chuni Lal and later on by your personal influence and party basis got your order confirmed by the Municipal Committee, Qadian, without bringing the specific allegations, the basis on which you had suspended him, to the notice of the Committee in writing.

3. That you brought the Municipal administration into contempt by seizing the municipal record from the Secretary at the Railway Station.”

The petitioner made a representation but the Punjab Government by an order, dated the 26th March, 1954, removed the petitioner from membership and disqualified him for election for a period of five years.

The petitioner now prays for a writ of *certiorari* for quashing the order of the Punjab Government, and he further states that the abuse alleged against him was not as a member of the Municipal Committee but only as Vice-President of the Committee elected in May 1953 and out of the nine persons against him under section 16(1) (e) of the Act.

The allegation of the petitioner is that he was elected in May 1953 and out of the nine persons elected seven were non-Congressmen and two were Congressmen, that the present Minister for Public Works, Sardar Gurbachan Singh Bajwa, who is a resident of Qadian (Ward No. 8), was opposed to the petitioner and had worked for the candidature of Ujagar Singh Nirman, who stood against the petitioner but was unsuccessful, that

before the partition also Harcharan Singh Bajwa, Labh Singh
 a nephew of the petitioner, stood for election to Fakhar
 the Punjab Assembly against Sardar Gurbachan Singh Bajwa and the petitioner was helping the v.
 former and in the last Punjab Assembly election The State of
 the petitioner opposed Sardar Gurbachan Singh Punjab
 Bajwa and thus "there is bad blood between" them Kapur, J.
 and that as a result of this Sardar Gurbachan
 Singh Bajwa "felt humiliated" and was on a look-
 out to get the petitioner out from the Municipal
 Committee. After alleging some of the facts
 which I have set out above, the petitioner in
 paragraph No. 12 states that he was discharged by
 the Criminal Court which held that the complaint
 against him "was false and unproved."

The State of the Punjab has filed an affidavit of Mr. S. R. Maini, who is the Secretary to the Punjab Government, Health and Local Government Departments, and he has denied that any action has been taken at the instance of Sardar Gurbachan Singh Bajwa. He has also denied that Harcharan Singh Bajwa is a nephew of the petitioner because he is a Bajwa Jat and the petitioner is a Sandhu Jat who lived in another village. It has also been pleaded that when the order was passed by the petitioner suspending Chuni Lal, the election of the President had been gazetted and therefore, the order of the petitioner was without jurisdiction, illegal and void.

In section 16 of the Punjab Municipal Act power is given to the State Government for the removal of members of a Municipal Committee, and the relevant provision is—

"16. Powers of the Provincial Government as to removal of members.—(1) The

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Provincial Government may, by notification, remove any member of committee—

* * * *
* * * *

(e) if, in the opinion of the Provincial Government he has flagrantly abused his position as a member of the committee or has through negligence or misconduct been responsible for the loss, or misapplication of any money or property of the committee.

* * * *
* * * *

Provided that before the Provincial Government notifies the removal of a member under this section, the reasons for his proposed removal shall be communicated to the member concerned, and he shall be given an opportunity of tendering an explanation in writing”.

Section 22 provides for the removal of President or Vice-President of a Municipality.

The Government have denied the allegations of *mala fides*, etc., made by the petitioner, and the question to be decided is whether this Court should interfere in the circumstances of this case.

In my opinion all that the law requires is that if the State Government are of the opinion that there has been a flagrant abuse of position by a member, he can be removed provided the reasons for his proposed removal are communicated to him and he is given an opportunity of tendering an explanation in writing. The intention of the

Legislature is clear from the words of the section which does not require an inquiry to be held, and all that it requires is that the person against whom action is proposed to be taken should be allowed to make a representation in writing. My attention was drawn to *Vijaya Ragave v. The Secretary of State for India in Council* (1), where section 9 of the Madras Act was interpreted. Under the Madras Act the Governor-in-Council could remove an elected Municipal Commissioner for misconduct, and a removed member brought a suit for damages against the Secretary of State, and it was held that as the defendant had not proved misconduct the member was entitled to damages. At page 471 Kernan, J., said—

“The words of section 9 enable the Governor-in-Council to remove the Commissioner by reason of, or on account of, misconduct, etc., or as expressed in the Act ‘for misconduct.’ If it was intended by the Legislature that the Governor-in-Council should be the judge of whether acts done by a Commissioner justified his removal, the language used would have been different to that in section 9 of Act III of 1871. The language would have then either given a general discretion uncontrolled and unlimited, or would have given power to the Governor-in-Council to remove, if the conduct or act of the Commissioner seemed to the Governor-in-Council to require such removal, or language to that effect.”

This case supports the submission of the Advocate-General that the words of the section give the discretion of removal to the State Government.

(1) I.L.R. 7 Mad. 466

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The next case relied upon by the Advocate-General is *The State of Bombay v. Atma Ram* (1), where it was held under the Preventive Detention Act that the satisfaction is to be of the Government which alone is to be established and this satisfaction must be based on some grounds which must be such as a rational human being can consider connected in some manner with the objects which were to be prevented from being attained, and the question of satisfaction except on the ground of *mala fides* cannot be challenged in a Court of law.

In *Nakkuda Ali v. M. F. De S. Jayartne* (2), the words "has reasonable grounds to believe ***" were interpreted by the Privy Council as imposing a condition that there must in fact exist such reasonable grounds, known to the person taking action, before he can validly exercise his power, but from this, it was said, it could not be said that he must be acting judicially in exercising that power. Lord Radcliffe observed—

"Can one not act reasonably without acting judicially. It is not difficult to think of circumstances in which the Controller might, in any ordinary sense of the words, have reasonable grounds of belief without having ever confronted the licence holder with the information which is the source of his belief. It is a long step in the argument to say that because a man is enjoined that he must not take action unless he has reasonable ground for believing something he can only arrive at that belief by a course of conduct analogous to the judicial process."

(1) A.I.R. 1951 S.C. 157
(2) 1951 A.C. 66

The Allahabad Court in the *Government of the United Provinces v. Radhey Lal* (1), has held that where the statute provides that the sole judge of a certain fact will be a certain authority, no suit can lie to question the decision of such authority in respect of such matter, and the words "in the opinion" appearing in subsection (3) of section 40 of the Municipalities Act have the effect of making the Provincial Government the sole judge of the fact whether a member has flagrantly abused his position or not. Malik, J., as he then was, said at page 99—

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"The Provincial Government having acted in accordance with the procedure laid down and having in good faith considered that the plaintiff had so flagrantly abused his position as a member of the Board as to render his continuance as such detrimental to the public interest, the civil courts cannot substitute their own opinion for the opinion of the Provincial Government."

I am, therefore, of the opinion that it is not open to this Court to interfere with the discretion of the Government if the forms of law have been complied with in that a notice as required under section 16(1)(e) and section 22 of the Municipal Act was given to the petitioner, and it is not open to the Court to go into the sufficiency of the reasons.

It was then submitted that the action of the Government is *mala fide*. The question of *mala fides* is a question of fact and has to be established by the petitioner, see *Lahiry's case* (2), where it was held that the satisfaction of the authority making the order as to the matters specified in the

(1) I.L.R. 1948 All. 91

(2) 1953 S.C.R. 451

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Act is the only condition for the exercise of his powers and the Court cannot substitute its own satisfaction for that of the authority. It is, however, open to the detenu to establish, if he can, that the order was made *mala fide* and in abuse of powers, but the onus of proving the absence of good faith is upon the detenu and it is certainly a heavy burden to discharge. Mere suspicion is, however, not proof. In the present case I do not think that *mala fides* have been established. Besides, what advice was tendered to the Governor by the Minister-in-charge is not a matter which can be enquired into by the Court and is expressly barred under Article 163 (3) of the Constitution of India.

In my view no case has been made out for the interference of this Court and I would, therefore, dismiss this petition with costs. Counsels fee Rs 200.

APPELLATE CIVIL.

Before Bishan Narain J.

BRAHMUN AND OTHERS,—Appellants.

versus

BALAM ALIAS BALMUKAND,—Respondent

First Appeal from Order No. 145 of 1953

1954
Nov., 24th

Workmen's Compensation Act (VIII of 1923)—Section 30—Judgment not pronounced in the presence of the parties—Counsel informed after some days—terminus a quo for purposes of appeal—Whether date of judgment or date of communication to counsel.

Indian Limitation Act (IX of 1908)—Section 5—Time between the date of judgment and its communication to Counsel—Whether can be excluded—"Sufficient Cause"—Construction of—Workmen's Compensation Act (VIII of 1923)—Section 3—Procedure to be followed by Commissioner indicated—Question whether the accident arose out of and in the course of employment—Whether a question of law—Section 30—Power of High Court to interfere—Extent of—"Employment"—meaning and scope of.