

Gurpal Singh and others
v.
Bachan Kaur alias
Gurdial Kaur and another

therefore, allow this appeal, set aside the decree granted by the appellate Court and instead dismiss the suit of the plaintiffs, but considering all the circumstances leave the parties to bear their own costs, throughout.

Dulat, J.

PREM CHAND PANDIT, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before A. N. Grover, J.

BHAGAT RAM PATANGA,—*Petitioner.*

versus

THE STATE OF PUNJAB,—*Respondent.*

Civil Writ No. 22 of 1963.

1963
Sept., 18th.

Punjab Municipal Act. (III of 1911)—S. 16(I) (e)—Order under—When can be set aside—Flagrant abuse of position as a member—Meaning of—Allegations of misconduct and holliganism against a member in a meeting of the municipal committee—Whether amount to flagrant abuse of his position as a member.

Grover, J.

Held, that under section 16(1) (e) of the Punjab Municipal Act, it is, no doubt, for the State Government to form the opinion whether a person has been guilty of flagrant abuse of his position as a member of the Committee but if on the facts stated either in the order or in the show-cause notice which preceded the order, it is apparent that those facts were altogether extraneous or were not germane or relevant to the provision of the law under which action is taken, then the orders must be struck down.

Held, that if a person, in the discharge of his duties as a member of the municipal committee, is guilty of a flagrant abuse of power, his case would be covered by section 16(1) (e) of the Act. The allegation that the member misconducted himself, did not maintain decorum, did not obey the chair and brought some visitors to create disturbance in the meeting of the committee which was being held for

the election of the President is not germane nor relevant to the provisions of section 16(1) (e) of the Act and cannot justify the removal of the member on the ground that he had flagrantly abused his position as a member of the committee.

Petition under Article 226 of the Constitution of India praying that a writ of mandamus, certiorari, or any other appropriate writ, order, or direction be issued quashing the order of the respondent.

ANAND SWARUP, ADVOCATE, for the Petitioner.

N. L. SALOOJA, ADVOCATE, for the ADVOCATE-GENERAL, for the Respondents

ORDER

GROVER, J.—This judgment shall dispose of Civil Writ No. 22 of 1963 and Civil Writ No. 539 of 1963.

Grover, J.

In the first petition which has been filed by Bhagat Ram Patanga, it has been alleged that he had been elected a member of the Municipal Committee, Phagwara, on four occasions and in the last elections held in October, 1959 he was elected once again as a Municipal Commissioner. On 20th June, 1960 a meeting was called for the election of the President and the Vice-President of the Committee which was presided over by the Sub-Divisional Officer (Civil). The Presiding Officer is stated to have conducted the election in an irregular manner whereupon the petitioner and other elected members protested. In paragraph 5 of the petition it is stated that the party of Bhag Ram, the presidential candidate, whom the Sub-Divisional Officer (Civil) favoured brought into the hall some members of the public who created a row and even manhandled Om Parkash Agnihotri, a member of the Punjab Vidhan Sabha and also a member of the Phagwara Municipal Committee who was

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the other candidate for the office of the President. It may be mentioned that Om Parkash Agnihotri is the petitioner in the second writ petition. Subsequently the Sub-Divisional Officer (Civil) declared Bhag Ram elected as President. Thereupon the petitioner, Bhagat Ram Patanga, and five other members of the Committee instituted a writ petition, No. 1095 of 1960, challenging the election of Bhag Ram as President of the Committee but this was dismissed on the ground that some disputed facts were involved. While that writ petition was pending on 5th December, 1960, the Punjab Government served a notice upon the petitioner under the proviso to section 16(1) of the Punjab Municipal Act calling upon him to show cause why he should not be removed from the membership of the Committee under section 16(1)(e) of the Act. It is necessary to set out the material portion of the notice, a copy of which is Annexure 'A' :—

“It has been brought to the notice of the Government that, on the 20th June, 1960 the Sub-Divisional Officer (Civil), Phagwara convened a meeting of the newly elected members of the Municipal Committee, Phagwara after the elections of the Committee, held on the 17th October, 1959 in order to administer oath of allegiance and to conduct the election of the President of the Committee to enable the new Committee to take over the charge. You also attended that meeting in your capacity as a member of the newly constituted Committee. At the time of election of the office of the President you were supporter of the group headed by Shri Om Parkash Agnihotri, member of the Committee whose candidature was proposed for this office.

During the course of the meeting when Shri Om Parkash Agnihotri became unruly and began to tear his clothes, beat his breast and create a row, you managed to bring some outsiders in the Town Hall to cause disturbance at the meeting. Moreover you did not maintain decorum or care to obey the chair. By your aforesaid action you have flagrantly abused your position as a member of the Committee within the meaning of section 16(1)(e) of the Punjab Municipal Act, 1911. I am directed to call upon you to show cause under proviso to section 16(1) *ibid* why you should not be removed from the membership of the Committee under section 16(1)(e) *ibid*."

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The petitioner submitted an explanation but ultimately by means of a notification dated 11th September, 1962 (copy Annexure 'C') the Government of the Punjab made an order in the following terms :—

"Whereas the Governor of Punjab after giving an opportunity to Shri Bhagat Ram Patanga, Member, Municipal Committee, Phagwara of tendering an explanation under the proviso to section 16 of the Punjab Municipal Act, 1911, is satisfied that the said Shri Bhagat Ram Patanga has flagrantly abused his position as a member of the aforesaid Committee;

Now, therefore, in exercise of the powers vested in him under clause (e) of sub-section (1) of section 16 *ibid*, the Governor of Punjab is pleased to remove the said Shri Bhagat Ram Patanga from the membership of the Municipal Committee, Phagwara

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from the date of publication of this notification in the official gazette and is further pleased to disqualify the said Shri Bhagat Ram Patanga for a period of three years from the aforementioned date under sub-section (2) of section 16 *ibid.*”

It is this order which has been challenged mainly on the ground of *mala fides* as also for the reason that the action purported to have been taken had no relevancy to the powers conferred by section 16(1)(e) and that the action taken was prompted by extraneous considerations and was an abuse of the power vested in the Government under section 16.

In the written statement the facts stated in paragraphs 5 and 11 are material and deserve to be set out :—

“5. Contents of para 5 of the writ petition are absolutely wrong and hence denied. Shri Om Parkash Agnihotri and the petitioner being convinced that they could not secure a majority of votes in the meeting on that day, deliberately created trouble in the meeting hall and called some hooligans belonging to their party inside the Hall and all of them joined hands in creating confusion and a scene in the meeting. Shri Bhag Ram Handa did not call any person to create a row or manhandle Shri Om Parkash Agnihotri.

11. Contents of para 11 of the writ petition are denied. The petitioner was removed from the membership of the Committee, due to his unruly behaviour, for not maintaining decorum and caring to obey the

chair. Such performance by a 'City Father' was considered to be very objectionable. Copy of the order is annexed at R-1".

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In the petition of Om Parkash Agnihotri the facts are very similar as almost a common part was attributed to him as well as Bhagat Ram Patanga. The show cause notice in his case dated 5th December, 1960, was almost in the same terms as in the other case. The notification dated 11th September, 1962, by which he was removed as also disqualified was in identically the same terms as in the case of Bhagat Ram Patanga. The principal argument that has been raised on behalf of both the petitioners by Shri Anand Swarup is that it is patent from the orders of removal from membership of the Committee as also the show cause notices and the position taken up in the written statements that the orders were made on grounds which were not germane or relevant to the provision of law under which they were made, i.e., section 16(1)(e) of the Punjab Municipal Act and that they were plainly *ultra vires* the section. Section 16(1)(e) provides that the State Government may by notification remove any member of Committee "if, in the opinion of the State 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". In the present cases the action was taken on the ground that these two members had flagrantly abused their position as members of the Committee. Now, the show cause notices referred to before charged Bhagat Ram Patanga with the act of bringing some visitors in the Town Hall to cause disturbance at the meeting and not maintaining decorum or caring to obey the chair whereas against Om Parkash Agnihotri it was alleged that he became

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unruly and began to tear his clothes, beat his breast and create a row in the meeting at the time when the ballot papers were being distributed to the members for casting their votes. Mr. Anand Swarup has strenuously urged that even if these allegations be accepted as correct although they were emphatically denied and according to the counter version of the petitioners it were the supporters of Bhag Ram who had created trouble and although such a conduct would be most condemnable and reprehensible, it would nevertheless not be covered by the expression "has flagrantly abused his position as a member of the Committee". This according to Mr. Anand Swarup has something to do with the abuse of position in the capacity of a member and not any kind of personal misconduct which is completely divorced from his position as a member of the Committee. The object of the provision is that a member should not be able to take undue advantage of his position as a member of the Committee. In other words, he should not be in a position to show favour or indulge in self-aggrandisement by virtue of his position as a member. It is pointed out that if, as has been alleged in the case of Om Parkash Agnihotri, he started tearing up his clothes or beating his breast, that had no relevancy or connection whatsoever with his position as a member of the Committee. A Full Bench of this Court in *S. Joginder Singh v. The State of Punjab and another* (1) had occasion to discuss the circumstances justifying removal under the aforesaid provision. In that case the basis on which that decision proceeded was that if a member of the Municipal Committee happens to encroach upon Municipal land and imports goods in the Municipal area and avoids payment of octroi duty and does similar other acts while sitting as a member of the Committee, he does in a real sense

(1) I.L.R. (1963) 1 Punj. 588—1963 P.L.R. 267.

abuse his position as a member of the Committee. Dulat J., who delivered the judgment, observed as follows at page 278 :—

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“It is no answer, in my opinion, for him to say that those acts were not, as they indeed could never have been, done in exercise of his powers as a member of the Committee. The whole point is this that as a member of the Committee he is expected to prevent encroachments on Municipal land and evasion of octroi duty, and he cannot be permitted to himself indulge in such activities consistently with his duties, and, if he does so, he is flagrantly abusing his position. It has to be remembered that as a member of the Committee such a person is in fact better placed to break the law, as his office is to some extent a shield against prompt detection. Some emphasis was laid on the expression ‘flagrantly’ used in section 16(1)(e), and it was said that, even if the petitioner had broken the law to the detriment of the Municipal Committee on one or two occasions, it cannot be said that he had ‘flagrantly abused his position’, the suggestion being that the expression ‘flagrantly’ indicates that the abuse of position must have occurred over a long period of time and in connection with repeated acts. I do not think the words ‘flagrantly abused his position as a member of the Committee’ carry any such implication. What the clause means is that if a member of a Committee, in disregard of his duty, does any act or acts, which shock a reasonable mind, then he can be removed by the State Government, and again it is

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the State Government, that has to form that opinion. I am quite clear that if the allegations of fact made against the petitioner were true, then the State Government could well have held that the petitioner had 'flagrantly abused his position as a member of the Committee.'

The above observations make it quite clear that it is only in the discharge of his duty as a member that if a person is guilty of a flagrant abuse of power, his case would be covered by section 16(1)(e). Mr. N. L. Salooja, who appears for the respondents, however, relies on the later part of the passage extracted above and submits that if a member does any act which shocks a reasonable mind, then he can be removed by the State Government and it is the Government which is to form that opinion. It is suggested by Mr. Salooja that the conduct of the petitioners if proved was such that it would shock a reasonable mind. The observations which were made by the Full Bench were necessarily and essentially made in the light of the facts of that case and the last part of the passage cannot be read in an isolated manner but has to be read in continuation of what precedes it. When the whole passage is read I have no doubt that the Full Bench never meant or intended to lay down what Mr. Saluja contends for.

It may be that it is for the State Government to form the opinion whether a person has been guilty of flagrant abuse of his position as a member of the Committee but if on the facts stated either in the order or in the show cause notice which preceded the order it is apparent that those facts were altogether extraneous or were not germane or relevant to the provision of the law under which action is taken, then the orders must be struck down and for this though

the law is well settled but reference may be made to *P. J. Irani v. State of Madras* (2). In that case the question was whether certain property was governed by the Madras Buildings (Lease & Rent Control) Act, 1949, in the matter of protection of the tenant's possession. Section 13 of that Act provided for granting exemption from the operation of the Act by the State Government. A notification was issued by the Government on 4th June, 1952 granting exemption with regard to the aforesaid property. A petition was made to the High Court under Article 226 of the Constitution challenging the legality and propriety of the order of exemption on the ground that it violated Article 14 and certain other grounds. The Madras High Court upheld the validity of section 13 but it was held after examining the reasons disclosed by the Government as to why they granted exemption in that particular case that those reasons were not germane to the purpose for which the power of exemption had been vested in the Government and the order of exemption was quashed. The matter was finally brought to the Supreme Court and after upholding the validity of section 13 their Lordships in the majority judgment dealt with the argument whether the orders of the Government could be the subject of judicial review. The passage at page 1738 is noteworthy in this respect :—

“As already stated, the first point urged was that the order granting the exemption was an executive or an administrative order which was not amenable to being quashed by the issue of a writ of certiorari. We consider there is no substance in this objection. If the High Court were right in

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(2) A.I.R. 1961 S.C. 1731.

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their view that the order of exemption was passed for reasons which did not fall within the purpose for which the power was conferred by section 13 of the Act the order itself would be one discriminatory of the second respondent as violating his fundamental right to equal protection of the laws. In such an event Article 226 would certainly be available to set aside such an order which affected the fundamental right of the petitioner before the Court. Indeed, it was on the ground that individual orders passed by Government by virtue of the power conferred upon it by section 13 of the Act were examinable by the Court for their violating Article 14 that the constitutionality of section 13 was upheld and in the circumstances no objection could, therefore, be taken to a judicial review of such individual orders. Besides even if the order did not violate Article 14 still if the High Court were right in the view that the same was beyond the powers conferred on Government by section 13 of the Act, we see no substance in the contention that the Courts lack powers under Article 226 to set aside an *ultra vires* order vitally affecting a person's right to statutory protection against eviction. We do not consider that immunity from interference by the Courts could be sought for orders which are plainly *ultra vires* merely because they were passed *bona fide* in the sense of being without indirect motive. Particularly so when the power of the High Court under Article 226 of the Constitution is not limited to the issue of writs falling under

particular groupings, such as the certiorari, mandamus, etc. as these writs have been understood in England but the power is general to issue any direction to the authorities, viz., for enforcement of fundamental rights as well as for other purposes.”

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It was also suggested in the course of arguments that the High Court was in error in calling for reasons which induced the Government to pass the orders of exemption, though when the reasons were before the Court it was in a position to examine the legality of the order. That suggestion was dismissed as not well founded. In the present cases I am satisfied that on the showing of the Government itself the orders made were plainly *ultra vires* the section even if it be assumed that they were passed *bona fide* and that the grounds which led to the making of those orders were neither germane nor relevant to the provisions of section 16(1)(e) of the Act. Whatever misconduct was attributed to the petitioners was not of such a nature as could have the remotest connection with the discharge of their duty as members of the Committee and although lack of decorum and dignity and introducing incitement and unruly element in a solemn meeting of the Committee was much to be deprecated if true but that could not justify the removal of the petitioners on the ground that they had flagrantly abused their position as members of the Committee. I would consequently allow these petitions and direct that the impugned orders be treated as wholly void, illegal, *ultra vires* and ineffective. Taking into consideration all the circumstances I make no order as to costs.

B.R.T.