

ismail Khan Vs. State of U. P. and Another

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SooperKanoon Citation : sooperkanoon.com/455857

Court : Allahabad

Decided On : Dec-07-2000

Reported in : 2001(1)AWC463

Judge : Shyamal Kumar Sen, C.J. and ;Sudhir Narain, J.

Acts : U. P. Municipalities Act, 1916 - Sections 48(2A); [Indian Penal Code \(IPC\), 1860](#) - Sections 121A, 122, 201 and 212

Appeal No. : C.M.W.P. No. 36163 of 2000

Appellant : ismail Khan

Respondent : State of U. P. and Another

Advocate for Def. : Prem Chandra, ;B.D. Mandhyan, ;A. Narayan, Advs. and ;S.C.

Advocate for Pet/Ap. : G.K. Singh and ;A.P. Sahi, Advs.

Judgement :

Sudhir Narain, J.

1. This writpetition is directed against the order dated 5th August, 2000, passed by the State Government (respondent No. 1) whereby the petitioner has been removed from the office of the President, Nagar Panchayat Farah, district Mathura

in exercise of powers under Section 48 (2A) of the U. P. Municipalities Act. 1916 (hereinafter referred to as the Act).

2. Briefly stated the facts are that the petitioner was elected as the President (Adhyaksh) of Nagar Panchayat Farah in district Mathura. On a complaint received against the petitioner, the State Government issued a show cause notice to him under Section 48 (2A) of the Act asking him to submit his explanation regarding the charges levelled against him. In the said notice, seven charges were shown to have been committed by the petitioner. The first charge was that the police arrested the petitioner on 16th May, 1998, in Crime Case No. 96 of 1998 under Sections 121, 121A, 122, 201 and 212, I.P.C. which amounted to involvement of the petitioner in a criminal offence. Charge No. 2 to 7 were in relation to the contracts given by the petitioner to other persons against the Government orders as well as against the orders of the District Magistrate. The petitioner was to give thekas by enhancing 30% of the amount of the preceding year but the petitioner did not follow such instructions of the Government. It is not necessary to refer the details of the charges here. The petitioner submitted his explanation to those charges to the State Government. He denied the charge that he had awarded any contract against the instructions or orders of the Government. He further stated that the mere fact that a criminal case has been registered against him, he couldn't be held guilty unless the Court finally decides the matter. Respondent No. 1 after narrating the charges levelled against the petitioner and the explanation given by him, passed the impugned order dated 5th August, 2000, removing him from the post of the President (Adhyaksh), Nagar Panchayat Farah, district Mathura.

3. We have heard Shri R. N. Singh, learned counsel for the petitioner, and the learned standing counsel for respondent Nos. 1 and 2.

4. The learned counsel for the petitioner has assailed the impugned order on three grounds. Firstly, it is urged that the impugned order is based on the report submitted by the District Magistrate, Mathura, to the State Government, but its copy was not supplied to the petitioner. Secondly, the petitioner was not afforded proper opportunity while making enquiry. Lastly, it is urged that respondent No. 1 did not assign any reason in the impugned order for coming to the conclusion that

the charges against the petitioner have been proved. In this respect, the provisions of Section 48 of the Act have to be examined. Sub-section (2) of Section 48 enumerates various grounds on which a President can be removed from his office. Sub-section (2A) provides a procedure, which is to be followed before passing an order. Sub-section (2A) reads as under :

'(2A) After considering any explanation that may be offered by the President and making such enquiry as it may consider necessary, the State Government may, for reasons to be recorded in writing, remove the President from his office :

Provided that in a case where the State Government has issued notice in respect of any ground mentioned in clause (a) or sub-clauses (ii), (iii), (iv), (vi), (vii) or viii) of clause (b) of sub-section (2), it may instead of removing him give him a warning.'

5. The State Government has to comply with three conditions before passing an order under Section 48 of the Act, viz. (1) consider the explanation offered by the President, (2) conduct enquiry and (3) record reasons in writing with regard to removal of the President from his office. The petitioner was given a show cause notice and he submitted his explanation to the charges. After explanation is submitted, the Government has to make enquiry. The enquiry is to be conducted after giving opportunity to the President who was sought to be removed. Sub-section (2A) does not provide the manner in which the enquiry is to be conducted. The enquiry has to be made on the principles of natural justice.

6. In the instant case, the State Government appears to have asked for a report from the District Magistrate and the District Magistrate submitted its report to the State Government. The State Government has relied upon the said report for coming to the conclusion that the petitioner was guilty of the charges levelled against him. Admittedly, the petitioner was not supplied with any copy of such report. It was incumbent upon the State Government to provide the copy of the report to the petitioner, if it wanted to rely upon the same for coming to the conclusion that the petitioner is guilty of the charges. This question was considered by the Division Bench of this Court in Civil Misc. Writ Petition No. 18216 of 2000, Smt. Anwari Begam v. State of U. P. and others, wherein it was

held that if the State Government relied upon any report submitted by the Deputy District Magistrate, it should have supplied its copy to the person concerned and on its failure to do so, the order was liable to be set aside. Similar view was expressed in *Rama Shankar Barnwal v. State of U. P. and others*, 2000 (1) UPLBEC 567. Admittedly in the present case as the petitioner was not given any copy of the report of the District Magistrate, the enquiry was thus, in violation of the principles of natural justice.

7. The learned counsel for the respondents contended that the petitioner had awarded contracts and it was for him to submit explanation that he awarded the contract in accordance with law. It is not necessary to examine here as to what extent the onus is on the petitioner to establish his explanation. It is clear that if any authority relies upon certain document or report, it has to supply the same to the person concerned. The petitioner had stated that the document was not supplied to him, which he asked for. There is nothing to show that the request of the petitioner was considered. Respondent No. 1 had to consider the request for supply of the document, which was sought to be relied against the petitioner.

8. There is another infirmity in the impugned order. Respondent No. 1 in its order has referred to the charges levelled against the petitioner as well as the explanation offered by him for coming to its own conclusion but it did not record any reasons for arriving at such conclusion. Section 48 (2A) itself provides that reason is to be recorded in writing for coming to a conclusion. The respondent should have considered each of the charges and the material evidence produced on such charges to come to the conclusion that those charges have been proved. The respondent had to appraise the evidence and record its reasons for taking the decision. The order, in the absence of recording of reasons is clearly in contravention of the provisions of Section 48 (2A) of the Act. In *Ishrat Ali Khan, President, Municipal Board, Rampur v. State of U. P. and others*. 1986 UPLBEC 1114, this Court held that recording of reasons contemplates that the explanation has to be considered and to state the reasons as to why the explanation offered by the petitioner was not convincing and acceptable. It was observed :

'.....Recording of reasonsimplies that the explanation furnished by the petitioner should have been considered objectively and if the same was not found satisfactory reasons should have been stated. Instead we find that the State Government has merely stated the charge, the explanation and then it has recorded its conclusion without recording reasons. The State Government was acting in a quasi-judicial manner, it was required to consider the charge and the petitioner's explanation and to state reasons as to why the petitioner's explanation was not convincing or acceptable. Mere statement that the petitioner's explanation was not satisfactory and that the charge is proved, does not fulfil the requirement of recording reasons. Any order of a quasi-judicial authority which does not contain reasons is bad in law. See Mahabir Prasad v.State of U. P., AIR 1970 SC 1302 and Indra Prakash Kapur v. State of U.P.. 1967 ALJ 808 .'

9. Similar view was expressed by a Division Bench of this Court in Nasimuddin v. State of U. P. and others, 2000 (3) ESC 1611 (All).

10. In view of the above, the writ petition is allowed. The impugned order dated 5th August. 2000, is hereby quashed. Respondent No. 1 is directed to decide the matter afresh in accordance with law keeping in view the observation made above preferably within two months from the date of production of a certified copy of this order before respondent No. 1. In the facts and circumstances of the case, the parties shall bear their own costs.