

**Nasimuddin Vs. State of U.P. and Another**

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**Court :** Allahabad

**Decided On :** Apr-03-2000

**Reported in :** 2000(3)AWC1803

**Judge :** S.H.A. Aaza and ;Bhanuwar, JJ.

**Acts :** Uttar Pradesh Municipalities Act, 1916 - 48(2A); [Constitution of India](#) - Article 226

**Appeal No. :** Writ Petition No. 4134 (MB) of 1999

**Appellant :** Nasimuddin

**Respondent :** State of U.P. and Another

**Advocate for Def. :** C.S.C.

**Advocate for Pet/Ap. :** S.S.L. Srivastava, Adv.

**Judgement :**

**Bhanwar Singh, J.**

1. This writ petition has been filed by Nasimuddin. who was elected Chairman of Nagar Palika, Chandpur, Bijnore, under Article 226 of the [Constitution of India](#) praying for a writ in the nature of certiorari quashing the Impugned orders dated 22.7.1999 and 9.9.1999. passed by the Government of U. P. and the District

Magistrate. Bijnore, respectively. Another writ in the nature of mandamus directing the respondents not to interfere in the working of the petitioner as Adhyaksh, Nagar Pallka Parlshad. Chandpur, district Bijnore has been sought.

2. The matrix of the petitioner's case is that he was elected as Chairman of Chandpur Nagar Pallka Parishad and took oath of his office on 1.12.1995. He discharged his duty satisfactorily for more than two years. However, In March, 1998, the District Magistrate, Bijnore, directed the Additional District Magistrate (Finance) to hold an enquiry against the petitioner on an unsigned and undated complaint. Under the pressure of the political heavy weights, the enquiry officer initiated enquiry proceedings without informing the petitioner and he conducted and concluded the entire proceeding behind his back without giving any opportunity of being heard. A show cause notice of March 27, 1999, was served upon the petitioner calling for his explanation regarding the allegations levelled against him. The copy of the enquiry report was not enclosed with the show cause notice. The petitioner then intimated the Secretary, Nagar Vikas that the documents relied upon in the show cause notice had not been furnished to him and, therefore, it was not possible to submit his reply to the show cause notice. A request for supply of all such documents along with a copy of the enquiry report was pressed into service but the District Magistrate asked the petitioner to obtain copies of the relevant documents from the Judicial record-room on payment of copying fee. However, under Instructions of the Government, the District Magistrate issued a letter dated May 25, 1999 and supplied along with it a few documents. In the process, the petitioner submitted reply to the show cause notice on 5.6.1999, asserting therein that the charges levelled against him were vague, baseless and politically motivated. The District Magistrate forwarded the petitioner's reply to the Government with his comments. The District Magistrate had proceeded on the basis of the ex parte enquiry report and acted with bias and prejudice against the petitioner. His interpretation of legal proceedings was unjust and uncalled for. He had wrongly suggested the Government about the punishment being imposed upon the petitioner. On the recommendation of the District Magistrate, the Government removed the petitioner from the office. The impugned order of dismissal is unreasonable and arbitrary as it has been passed by the Government without application of mind. No impartial enquiry was conducted after

an explanation having been called from the petitioner nor the latter was allowed to participate in the enquiry and in this way, the entire process of the petitioner's removal was against the principles of natural justice. In the circumstances, as pleaded by the petitioner, the impugned removal order deserves to be quashed.

3. The opposite parties filed their response asserting therein that on receipt of some complaints against the petitioner, an enquiry was initiated and the Additional District Magistrate (Finance and Revenue) was appointed as an enquiry officer to hold the enquiry. After conducting and concluding the enquiry, the enquiry officer submitted his report. After scrutiny of the enquiry report, the petitioner was called for to explain the charges levelled against him. A show cause notice to this effect was served upon him. Necessary documents were also supplied to the petitioner, as demanded by him. The District Magistrate submitted the petitioner's reply along with his comments to the State Government. Upon further examination of the complaint. evidence in support thereof, enquiry report, reply of the petitioner and the comments of the District Magistrate, the Government arrived at. a conclusion that the charges were substantiated against him and thus on the basis of the conclusion drawn. the petitioner was removed from the office of the Chairman, Nagar Palika Parishad, Chandpur. district Bijnore, in terms of Section 48 (2A) of the U. P. Municipalities Act, 1916. Thus, every step having been taken against the petitioner in accordance with law, this writ petition has no merit and. therefore, deserves to be dismissed.

4. We have heard learned counsel on both the sides.

5. It is significant to note that a complaint was lodged against the petitioner by some members of the Nagar Palika Parishad, Chandpur, district Bijnore. A copy of the said report is Annexure-2 on record. It does not bear any date but from the notings of the District Magistrate, it appears that the said complaint was initiated some time in August. 1998. The District Magistrate. Bijnore, swung into action forthwith and directed the Additional District Magistrate (Revenue and Finance) to conduct an enquiry. The Additional District Magistrate took nearly five months to complete the enquiry but surprisingly, he acted in a manner which was contrary to the settled norms of an enquiry being held. He did not contact the Chairman at all

nor apprised him of the allegations levelled against him and it is also not clear from the report. Annexure-3 that the officer even examined the relevant witnesses. Even if for argument's sake, it is accepted that it was a fact-finding enquiry, it was not desirable for the Additional District Magistrate to proceed with such an enquiry in a secretive manner without interrogating the petitioner regarding the charges raised against him. On the basis of this enquiry, the Secretary, Nagar Vikas of U. P. Government issued a show cause notice to the petitioner, a copy of which is Annexure-5 on record. By virtue of this notice, the petitioner was asked to show cause as to why he should not be removed from his office. The petitioner, vide his letter of April 12, 1999 requested the Secretary of Nagar Vikas Section of U. P. Government to furnish the copies of all the documents which were relied upon in support of the allegations levelled against him in the complaint. The District Magistrate was directed by the Secretary of the Government to supply the copies of relevant documents without asking for payment of copying fee, etc. The District Magistrate then sent a letter on May 25, 1999 to the petitioner and along with it were enclosed the copies of the documents, such as complaint, enquiry report and the correspondence between the District Magistrate and the Government. The petitioner then submitted his detailed reply, a copy of which is Annexure-9 on record. On having considered the reply of the petitioner, the Principal Secretary, Nagar Vikas issued the impugned removal order of July 22, 1999, on behalf of the Government.

6. The crucial question which would arise for determination by this Court is as to whether the removal order was in terms of Section 48 (2A) of the U. P. Municipalities Act? The said section postulates as follows :

'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.'

7. The above quoted provisions of law would reveal that the State Government before passing a removal order has to cross three legal barriers. These are :

(1) To consider the explanation offered by the President ;

(2) To conduct an enquiry ; and

(3) To record the reasons in writing regarding removal of the President from his office.

8. It put on the touch-stone of the triple-standard, as prescribed by the mandatory provisions of law, the removal order of the petitioner in question is bound to drift into rough weather and entail with serious legal infirmities. The first condition, as enumerated above, was fulfilled by both the parties. The Government asked for an explanation from the petitioner and the latter complied with and submitted a detailed reply as laid in Annexure-9. However, the Government miserably failed to fulfil the second essential ingredient of holding an enquiry. The opposite parties have made a futile attempt to convince the Court by making a reference to the report of the Additional District Magistrate (Revenue and Finance) who had submitted his report to the District Magistrate on being asked by the latter. The prerequisite of the enquiry, as envisaged in Section 48 (2A) of the Act. Is that the enquiry should be ordered by the Government and none else. The District Magistrate is a Government servant but certainly he is not a Government. It is not necessary to quote here as to what the Government is? It would be sufficient to say that the Government, as referred to in the Act, is comprised of Nagar Vikas Department acting on behalf of the Government of U. P. In the case in hand, no official or officer of the Government has asked either the District Magistrate or the Additional District Magistrate to enquire into the allegations levelled against the petitioner. It appears that the District Magistrate out of his zeal and enthusiasm acted in haste and asked his Additional District Magistrate to enquire into the matter and submit his report. The District Magistrate was not at all authorised to have asked for an enquiry by his subordinate without obtaining prior permission and orders of the State Government. Of course, he is a unit between the Government and the Municipal Board authorities but as said above, he has no authority to order for an enquiry on his own. Be that as it may, the report submitted by the Additional District Magistrate could at the most be termed as a preliminary report which was submitted by him without taking recourse to the procedure set for holding a quasi-judicial enquiry. He has not interrogated the petitioner nor apprised him of any complaint. He has also not endeavoured to obtain the other side

version from other sources with a view to arrive at a reasonable conclusion. The term 'enquiry' implies in itself some conditions such as serving a charge-sheet upon the delinquent, asking him for his explanation, recording of evidence in support of the charges, giving opportunity to the delinquent to cross-examine the witnesses, afford an opportunity of hearing to the person against whom the enquiry is proceeding and asking him to lead defence evidence, if any and then recording of findings with reasons in support thereof.

9. From a perusal of the record, it is manifestly clear that the above conditions remained unfulfilled at the level of the Government. No enquiry was ordered by the Government. The Principal Secretary of Nagar Vikas simply acted upon the reports of the District Magistrate and Additional District Magistrate and he did not even discuss the various explanations on individual charges that were offered by the petitioner. The removal order is a cryptic order. It simply refers to the charges and respective denials of the petitioner and then records the conclusion that the charges stand proved. Neither this order is based on an enquiry nor it complies with the third condition of Section 48 (2A) directing for recording of reasons in writing. The removal order, as is evident from its perusal, is totally briefed up reasoning and from a bare look, it appears to be a short slipped manner of acting in an arbitrary way. This Court has held in *Ishrat Ali Khan. President. Municipal Board. Rampur v. State of U. P. and others*. 1986 UPLBEC 1114, that the Government has to act in accordance with the provisions of Section 48 (2A) of the Act in a quasi-judicial manner in considering the charges and passing the order of removal. The following quote from the said decision is quite relevant for the purpose of the case in hand :

'.....the State Government failed to record reasons as contemplated by law. Instead it merely recorded its conclusion. Recording of reasons implies 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. The State Government has merely stated the charge, the explanation and then it has recorded its conclusions 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 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.'

10. In the case in hand also, the Principal Secretary of Nagar Vikas simply jumped on the two conclusions without having discussions on the merit of the charges and the explanation offered by the petitioner. Obviously thus, the Government has not proceeded to hold an enquiry in a quasi-judicial manner as a result of which the compliance of the provisions of Section 48 (2A) of the said Act were not carried out in letter and spirit. The petitioner's explanation which runs in detail spreading over 13 pages giving plausible reasons for the action taken by him was not referred in the impugned order.

11. Having regard to the discussions held above, we are of the decisive view that the impugned order suffers from a severe legal lacuna as it has not been passed in consonance with the terms of Section 48 (2A) of the U. P. Municipalities Act by the Government. In the result this writ petition succeeds.

12. The writ petition is allowed and the impugned order, Annexure-1 removing the petitioner from the office of the Chairman is quashed. As a consequence, the petitioner shall be reinstated forthwith to the post of Chairman, Nagar Palika Parishad. Chandpur, district Bijnore.

No order as to costs.

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