

Ramesh Chandra Chanchal Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Oct-27-1998

Reported in : 1998(4)AWC626

Judge : M. Katju and ;S.L. Saraf, JJ.

Acts : Uttar Pradesh Municipalities Act, 1916 - Sections 48(2)

Appeal No. : C.M.W.P. No. 24347 of 1998

Appellant : Ramesh Chandra Chanchal

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Ashok Bhushan, Adv.

Judgement :

M. Katju, J.

1. This writ petition has been filed against the impugned order of the State Government dated 24.6.1998 Annexure-5 to the writ petition passed under Section 48 (2) of the U. P. Municipalities Act.

2. We have heard learned counsel for the parties. The facts of this case are that the petitioner was elected as President of Nagar Palika Parishad, Firozabad and

took oath of his office on 2.12.1995. It is alleged in the petition that the respondent No. 3 is an M.L.A. from district Ferozabad and is at present Forest Minister, U. P. Government and is also State President of Samta Party which is allied to the B.J.P. It is alleged that respondent No. 3 has been criticising the petitioner and making false allegations against him. He also fielded a candidate against the petitioner for the post of President of Nagar Palika Parishad, Ferozabad, who lost. It is alleged in paragraph 5 that the respondent No. 3 has always wanted to somehow throw out the petitioner from his office.

3. In paragraph 12, it is alleged that on 7.2.1998 a notice was Issued by the State Government to the petitioner in which two charges were levelled against him and he was asked to show cause why he should not be removed from his office. True copy of the notice dated 7.2.1998 is Annexure-2 to the petition. The petitioner submitted his reply on 2.3.1998 vide Annexure-3 to the petition. In this reply, the petitioner stated that the notice was sent at the Instance of the respondent No. 3 who wanted to throw out the petitioner from his office, and he also gave a reply on the merits of the charges. The petitioner submitted another reply on 28.3.1998 vide Annexure-4 to the petition. Thereafter, the State Government passed the impugned order dated 24.6.1998 Annexure-5 to the writ petition.

4. Several grounds have been taken in this petition. The petitioner has alleged that the main report of the District Magistrate dated 8.5.1998 which has been relied upon by the State Government in passing the impugned order has not been supplied to the petitioner and hence the petitioner could not give a reply to the said report. It is also stated in paragraph 31 that the State Government has not considered the explanation given by the petitioner in reply to charge No. 1. In paragraph 32. It is stated that the State Government has not given any reason as to how charge No. 2 is proved against the petitioner but it has only relied on the report of the District Magistrate, copy of which has not been supplied to the petitioner.

5. In paragraph 34 of the petition, it is stated that the Impugned order dated 24.6.1998 refers to another allegation against the petitioner of making 26 Irregular appointments, but in the show cause notice dated 27.2.1998 there was no such

charge against the petitioner. In paragraph 37 of the petition, it is stated that copy of the enquiry report dated 26.3.1998 of the District Magistrate was not supplied to the petitioner though it was relied upon by the State Government. It is stated that the respondent No. 3 by his influence got the impugned order passed. It is stated that the petitioner is an elected President and enjoyed the majority in the Nagar Palika Parishad but he has been illegally removed.

6. A counter-affidavit has been filed on behalf of the respondent. Nos. 1 and 2 and we have perused the same.

7. In our opinion, both the charges against the petitioner are frivolous and baseless. The charge No. 1 as mentioned in the notice dated 7.2.1998 relates to the strike by the Safai Karmcharis. In our opinion, this is not a ground of removal of an elected President of Nagar Palika Parishad.

8. In paragraph 19 of the petition, it is stated that the strike notice was given by one Sampat Ram Madhur, a close associate of respondent No. 3 and the respondent No. 3 himself was instrumental in starting the strike. At any event, in our opinion, this is no good ground for removing an elected functionary. In this connection, we are in respectful agreement with the Division Bench decision of this Court in Writ Petition No. 26554 of 1991, Municipal-Board, Ferozabad and others v. State of U. P. and others, decided on 7.2.1992, true copy of which is Annexure-6 to the writ petition. It has been held therein that wilful default does not mean mere carelessness or negligence. In our opinion, if the elected functionaries are removed because of strike, then it will be very easy to remove any elected functionary because it is well-known that it is very easy to instigate a strike in our country on some pretext or the other. In our opinion, elected functionaries should not be easily removable because in a democracy, the verdict of the people must be respected. Hence, in our opinion, the first charge against the petitioner is wholly frivolous.

9. As regards the second charge, in our opinion, this charge is also frivolous. It is alleged in this charge that the petitioner ordered for disbursement of a sum of Rs. 61,250 to the contractor without investigating whether the work of cleaning of nala has been done or not. The petitioner has alleged that the recommendation and

report of part payment of the amount in this connection was made by the Nagar Swasthya Adhikari. The report of which was forwarded by the executive officer and it was on this basis that the petitioner passed the order of payment of the amount. The petitioner has stated that the President of the Nagar Palika Parishad acts on the report of the officer of the Nagar Palika, and unless there is something on record or other Information, there is no reason for disbelieving any such report of the officers of the Nagar Palika Parishad.

10. In paragraph 21 of the petition, it is further stated that on 9.10.1997 when the petitioner came to know that the work regarding cleaning of the nala had not been done, he himself made an inspection and issued an order to the Executive Officer on 9.10.1997 for submitting his report within three days. The Executive Officer thereupon issued orders for an enquiry and got the total amount of Rs. 61,250 deposited back with the Nagar Palika fund on 15.10.1997. On 17.10.1997, the guilty Nagar Palika employees were suspended by the petitioner and an F.I.R. was lodged against them and further payment of the bill was stopped towards this work. In paragraph 22 of the petition, it is stated that the complaint regarding the payment of Rs. 61,250 was made by one Sri Vishnu Kant Verma, a close associate of respondent No. 3 on 2.12.1997 while much prior to this date, all necessary actions were taken by the petitioner in the month of October, 1997 itself and the amount was got deposited back on 15.10.1997. All these facts are mentioned in the petitioner's reply dated 28.3.1998 vide Annexure-4 to the writ petition.

11. As regards the allegation of making Irregular appointments, there is no such charge against the petitioner. Hence, in our opinion, this could not be a basis for passing the impugned order against the petitioner. Thus, it is evident that the charges against the petitioner are false, frivolous and motivated. It appears that some persons wanted to throw out the petitioner from his office and have got the impugned order passed illegally and arbitrarily. Hence, we quash the impugned order dated 24.6.1998.

12. The petition is allowed. No order as to costs.