

Khot Vs. the Rajasthan State and ors.

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Court : Rajasthan

Decided On : Aug-31-1951

Reported in : AIR1952Raj87

Judge : Wanchoo, C.J. and; Bapna, J.

Acts : Jodhpur Municipal Act, 1943 - Sections 8, 9(2), 232 and 233

Appeal No. : Civil Misc. Appln. No. 51 of 1951

Appellant : Khot

Respondent : The Rajasthan State and ors.

Advocate for Def. : Shri Dhar, Adv. and; Raj Narain, Adv. for Respondent No. 10

Advocate for Pet/Ap. : Hasti Mal, Adv.

Disposition : Application allowed

Judgement :

Wanchoo, C.J.

1. This is an application by Khot alias K. G. Lakhani under Article 226 of the Constitution of India praying that a writ in the nature of 'quo warranto', or such other order as may be appropriate, be issued against the Rajasthan State and 13 others, calling upon them to show cause by what authority opposite parties Nos. 2

to 14 claim to act as convener and members of an 'ad hoc' committee exercising the powers of President and members respectively of the Municipal Board, Jodhpur, and forbidding them from so acting, if they are unable to show such authority.

2. The facts, which have led to this application, may be briefly narrated. There is a Municipal Board established for the City of Jodhpur under the Jodhpur Municipal Act, 1943. This Municipal Board has been constituted under Section 7 of the Act of 1943 as a body corporate having perpetual succession and a common seal and the power of acquiring, holding and transferring property, movable or immovable & of contracting. The Board was in existence up to the 13th of May, 1950. On that date an order was passed under Section 9, Sub-section (2) of the Act of 1943, which was published in the Rajasthan Gazette of the 20th of May 1950, in the following terms:

'In pursuance of Sub-section (2) of Section 9 of the Jodhpur Municipal Act, 1943, it is hereby notified for general information that the Government have been pleased to terminate the term of the office of the present members of the Jodhpur Municipality with effect from the date of the publication of this notification in the Rajasthan Raj-Patra.

It is further notified for general information that Government have been pleased to direct that fresh elections for the reconstitution of the Jodhpur Municipal Board be held within three months and that during this period the Collector, Jodhpur, be appointed as Administrator of the Municipal Board, Jodhpur, under Section 233 of the Jodhpur Municipal Act, 1943 for the execution of the duties of the said Board.'

3. It appears that the elections could not be held within three months, and we are told that the term of office of the Collector as Administrator was extended from time to time, though there seems to have been no notification to this effect.

4. On the 6th of January, 1951, an order dated the 9th of December, 1950, was published in the Rajasthan Gazette, by which the Government fixed under Section 8 of the Act of 1943 the number of seats for the Jodhpur Municipal Board as 34, viz., 32 elected & 2 nominated, and divided the city into a number of wards.

Thereafter, it appears that fresh elections were held on the 8th and 9th of April, 1951, and results of the election were announced on the 21st of April, 1951. There was, however dispute about Ward No. 8, and no election was held in this Ward. Consequently, an order was passed on 18th of April 1951, extending the term of the Collector of Jodhpur as Administrator till the 15th May, 1951, or the formation of the Municipal Board, whichever was earlier. Then on the 28th of May, 1951, another order was passed extending the term of the Collector of Jodhpur as Administrator till the 31st of July, 1951.

5. Now we come to the order in dispute. It was passed on the 21st of June, 1951, and was published in the Rajasthan Gazette of the 23rd of June, 1951 in the following terms :

'In exercise of the powers conferred by Section 232 of the Jodhpur Municipal Act, 1943 and in modification of Notification No. P. 1 (3) L.S.C./50, dated the 13th May, 1950, the Government of Rajasthan is pleased to appoint, with effect from the date of publication of this Notification in the Gazette, an 'ad hoc' Committee consisting of the marginally noted personnel as the Authority to exercise and perform all powers and duties of the Board under the said Act until the said Board is re-constituted.

The Government is further pleased to order that Shri Rameshwar Singh shall be the Convener of the said Committee.'

16 names were mentioned in the margin. Of these 13 are opposite parties Nos. 3 to 14. 5 of these, viz., Mr. Makhtoor Mal, Mr. Komal Mal and Mrs. Parvati Lakhani refused to serve on the 'ad hoc' Committee, and that is why only the remaining 13 have been made parties to this application. As these 13 persons were acting or going to act as provided in the Notification, the applicant, who is one of the 31 persons, who have been elected in the last elections, got an interim order restraining these 13 persons from acting as an 'ad hoc' committee for the purpose of exercising all powers and duties of the Municipal Board of Jodhpur. It appears that after this interim stay order, the Government re-appointed the Collector of Jodhpur on the 26th of July, 1951 as Administrator in exercise of the powers conferred by Section 232 of the Jodhpur Municipal Act, 1943.

6. The main contention on behalf of the applicant is that the Government had no power under Section 232 of the Jodhpur Municipal Act or under any section of that Act to appoint an 'ad hoc' Committee of the kind which was appointed by them by their order of the 21st of June, 1951, and therefore, this Court should prohibit these persons from exercising the powers of the Municipal Board conferred on them by the order of the Government.

7. The application has been opposed on behalf of the State of Rajasthan, and also by some of the other opposite parties. The contentions in the two replies are the same, and it would, therefore, be enough to deal with the reply on behalf of the State. It is contended on behalf of the State that it had power under Section 232 of the Act of 1943 to pass such an order. Further power is claimed under Sections 8 and 233 of the Act, even if it is held that there is no power under Section 232. Lastly it is urged that even if there is no express provision to meet such a contingency, the Rajasthan Government, which is responsible for the local administration, can, irrespective of the provisions of the Jodhpur Municipal Act, set up any machinery for the purpose of carrying on the administration of the Jodhpur Municipality.

8. The Jodhpur Municipal Act contains 234 sections and makes provisions in detail for election, for the duties of the various officers of the Municipal Board, and for the functions which the Municipal Board is to exercise, and for various miscellaneous matters dealing with the control over the Municipal Board. The sections providing for control over the Municipal Board are three, viz., Sections 231, 232 and 233. Section 231 provides that 'The Minister-in-charge may by order in writing suspend the execution of any order of the Board or prohibit the doing of any act which is about to be done or is being done in pursuance of or under cover of this Act, if in his opinion the order or act is in excess of the powers conferred by law or the execution of doing of the act is likely to lead to a breach of the peace, or to cause injury or annoyance to the public or to any class or body of persons.'

This section thus gives a veto to the Minister-in-charge, and now this veto must be deemed to be vested in the Government of Rajasthan.

9. Then comes Section 232, which is as follows: 'In case of emergency the Minister-in-charge may provide for the execution of any work or the doing of any act which the Board is empowered to execute or do and the immediate execution or doing of which is in his opinion necessary for the safety of the public and may direct that the expense of executing the work or doing the act shall be forthwith paid from the Municipal fund.' It is this section which is being relied upon by the State in support of the order of the 21st June, 1951, which is being challenged. As we read this section, it appears to us to be the converse of Section 231. That section has given power to the Government to veto any act or order of the Board, while this section gives power to the Government in an emergency to order the execution of any work or doing of any act under certain conditions. It has, in our opinion, nothing to do with the dissolution or super session of the Board and orders consequent thereon, or with the termination of the membership of the Board under Section 9 (2) and the orders consequent thereon. Section 232 contains the positive overriding power of the Government, while Section 231 contains the negative overriding power of the Government. We have no doubt that Section 232 cannot be used for appointment of either an Administrator or an 'ad hoc' Committee to exercise all the powers and duties of the Board. This will be perfectly clear, if we compare the language used in Section 232 with the language used in Section 233, which we now set out.

'233 (1) If the Board is, in the opinion of the Government, incompetent or persistently makes default in the performance of the duties imposed on it by or under this Act, or any other enactment, or exceeds or abuses its power, the Government may, after giving an opportunity to the Board to show cause why action under this section should not be taken either:

(a) if the Board is wholly or partly elected, dissolve it from such date as may be specified in the notification.

(b) supersede it from such date and for such period as may be specified therein.

(2) Where the Board is dissolved, the member including the President shall vacate their seats on the date fixed for dissolution in the same manner as if their periods of office had expired in the ordinary way on that date (save such members as held

office during the pleasure of Government) and members shall be elected or nominated to fill their places in the manner provided in this Act:

(3) Where the Board is superseded:

(a) all members, including the President shall from such date as may be specified in that behalf in the notification vacate their seats.

(b) all powers and duties of the Board shall, until the Board is reconstituted, be exercised and performed subject to the conditions, restrictions and limitations imposed on the Board by or under this Act by such authority as the Government may appoint in that behalf.

(c)*****

(d) *****'

10. It is clear that if the intention was to give Government power under Section 232 to appoint an authority in place of the Board, which was brought to an end under Section 9 (2), the words used in Section 232 would have been similar to the words of Section 233 (3) (b). The matter, to our mind, is so clear that no further labouring is necessary to show that Section 232 merely gives power to the Government to order execution of any work, for example, the making of a drain, or the doing of any act, for example, the shifting of a primary school from Mohalla A to Mohalla B, and does not empower it to constitute an authority to carry on all the powers and duties of the Board. We are, therefore, of opinion that the Government had no authority to pass the order dated 21st June, 1951, under Section 232 of the Jodhpur Municipal Act.

11. We now turn to the question whether such an order could be passed under Section 8 of the Act. That section is as follows:

'The Board shall consist of members nominated by the Government either by name or office or members elected from the inhabitants or partly of the one and partly of the other as the Government may by notification decide, provided that, unless the Government shall otherwise direct, the nominated members shall not

exceed one-third of the whole Board.'

A bare look at the words of this section is sufficient to come to the conclusion that it has nothing to do with the conferment of any power on Government to appoint an authority to exercise the powers and duties of the Board, after it is brought to an end under Section 9 (2). Section 8 merely gives Government power to specify the constitution of the Board, viz., how many members shall be elected and how many shall be nominated, and this the Government did under their Notification No. F. 1 (432) L.S.G./50-II of the 9th of December, 1950, published in the Rajasthan Gazette of the 6th of January, 1951. The Government, therefore, could not pass the order of the 21st June, 1951, under the power that they had under Section 8 of the Act. Then it was urged that the order could be passed under Section 233 of the Act. We have already set out the relevant portion of that section. It provides certain action by Government in case it finds the Board at fault. This action is taken after the Board's explanation has been considered. No action under Section 233 can be taken unless the Board's explanation has been called. It is not the case of the State that any action under Section 233 was taken against the Municipal Board of Jodhpur, when it was brought to an end on the 20th of May, 1950. The order bringing the Board to an end was issued under Section 9 (2), and not under Section 233. Section 9 (2) is a peculiar provision which could only be found in a Municipal Act passed by an autocratic State. But in any case the law has to be accepted as it stands, and the Government has power under Section 9 (2) to bring the Board to an end; but having brought the Board to an end under Section 9 (2), the Government cannot take the benefit of the provisions of Section 233, which can only come into play if the Board is either dissolved or superseded. We may further point out that there is a difference in the consequences which ensue when a Board is dissolved and when a Board is superseded. When a Board is dissolved, the consequences are given in Section 233 (2). That sub-section does not give any authority to Government to appoint an authority in place of the Board to carry on its functions. Learned counsel urged that there was a colon and dash after the end of Sub-section (2), and, therefore, the provisions of Clauses (a) to (d) of Sub-section (3) also applied to dissolution.

We are of opinion that this is not so. It appears to us that the colon and dash at the end of Sub-section (2) is a misprint for a full stop. Learned counsel has not been able to cite a single statute where a sub-section ends with a colon and dash. The edition which we have got of the Jodhpur Municipal Act contain two other printing mistakes in this very section. The word 'or' is omitted after the word 'notification' in Clause (a) of Section 233 (1). Further, in Sub-section (2), the word 'member' in the first line is in singular, though it should be in plural. Therefore, it is only when a Board is superseded that the Government have power to appoint another authority to carry on the functions of the Board. In this case, the Board was never superseded under Section 233, and therefore, the order of the 21st of June, 1951, cannot be justified under Section 233 (3) (b).

12. It may be mentioned that when the Board is brought to an end by the use of Section 9 (2), there is no provision in the Act for the appointment of an authority to carry on the functions of the Board, while the new Board is in the process of constitution. Learned counsel for the State urges that there is thus a lacuna in the Act, which could not have been intended, and, therefore, even if the Board is brought to an end under Section 9 (2), the Government should be held to have the authority to exercise power under Section 233 (3) (b), because the effect of acting under Section 9 (2) and superseding the Board is the same, namely that the Board comes to an end. The Jodhpur Municipal Act of 1943, as we have already pointed, contains 234 sections, and is an elaborate statute. If it was the intention of the framers of the Act that powers similar to those under Section 233 (3) (b) should be conferred 'on Government when bringing a Board to an end under Section 9 (2), this could have been easily provided by adding another sub-section to Section 9. This has, however, not been done. Similarly, if the intention of the framers of the Act was that when a Board was dissolved under Section 233 (2), the Government would have power to appoint an authority to carry on its functions till a new Board was constituted, such provision could have been made in Section 233 (2). There also, however, no such provision has been made. The reason for this, in our opinion, is not far to seek. It may have been the intention of those who framed the Act that in cases of termination of a Board under Section 9(2) and dissolution under Section 233 (2), there should not be an interregnum between the last Board and the new Board, and that the termination or the dissolution should take place

when the new Board had been constituted. This could be easily provided by fixing a date of termination under Section 9(2) after the elections had been held, and a date for dissolution under Section 233 (1) (a) also after the elections had been held. The absence, therefore, of a provision like Section 233 (3) (b) in these two cases may be due to the fact that the framers of the Act in their wisdom thought that there need not be any interregnum, which needed the appointment of an authority to carry on the functions of the Board in those two cases.

13. Learned counsel for the State, however, urges that an interregnum has now, in fact, occurred, and, therefore, there must be some power in Government to fill up that interregnum. He is, however, unable to point out to us any section in this Act which gives such power to Government, except Section 233 (3) (b), with which we have already dealt. In any case, if such a difficulty has been created, it is due to the action of the Government itself. It was not necessary to terminate the Board which was in existence upto the 20th of May, 1951, before elections were held. If that had not been done, none of these difficulties would have arisen. In any case, whatever the difficulties, the Jodhpur Municipal Act has to be interpreted as it stands, and the only remedy left to Government is to amend the Act.

14. We may finally consider the argument that has been put forward in paragraph 7 of the additional statement in the written statement filed on behalf of the State. It is said that

'where no express provision to meet such a contingency is provided, the Rajasthan Government, which is responsible for the local Government administration, can, irrespective of the provisions of the Jodhpur Municipal Act, set up any machinery for the purpose of carrying on the administration of the Jodhpur Municipality.'

We are of opinion that this argument cannot be accepted. When there is a statute of 231 sections providing for all kinds of contingencies, we cannot presume that there is any residuary power left in the Government to act beyond the provisions of the statute. That would, in our opinion, be a negation of the rule of law, and would arm Government with powers which would be above the law. When, therefore, an elaborate law exists, as in this case, the action of the Government must be

justified within the four corners of that law. If it cannot be so justified, the action must be held to be 'ultra vires.' We may point out in this connection that in the Punjab and the U. P. Municipal Acts, there are provisions to provide for all contingencies, and if the Jodhpur Municipal Act does not have similar provisions, the fault lies with those who framed the Act. For example, Section 13 of the Punjab Municipal Act provides in Sub-section (3) that

'notwithstanding anything contained in Sub-section (2) or in any rules made by the Local Government thereunder, an outgoing member shall, unless the Local Government otherwise directs, continue in office until the date fixed for the meeting at which his successor is required to take the oath of allegiance.'

Further, Section 30 of the U. P. Municipalities Act gives power to the Provincial Government to dissolve or supersede a board. Section 31 provides for consequences of super session. Section 31A provides for consequences of dissolution. There it is provided that on dissolution the President of the Board shall continue. This has been provided so that the executive work of the Board may be carried on. It is also provided that elections shall be held and nominations and co-options made of members or the President, as the case may be, on a date which shall be a date prior to the date of dissolution. In the U.P., therefore, the law itself provides that the dissolution will not come into effect till the new members have been elected or nominated or co-opted. The Jodhpur Municipal Act is silent on these points; but even so, if the orders had been passed carefully, a date of termination under Section 9(2) could have been so fixed that the elections were held before that date. The interregnum, therefore, that has occurred is due, in this case, to Government's own acts. Section 232 or any other provision of the Jodhpur Municipal Act cannot, in the circumstances of the present case, be availed of by the State to create any authority to carry on the administration of the Municipal Board, and only such action can be carried on as may be done by the officers or officials of the Board under the powers vested in them by the statute. We may point out that though the order, which is being directly challenged, is the order of the 21st of June, 1951, the consequence of our decision with respect to that order also hits the order of the 13th of May, 1950, and the last order of the 26th of July, 1951. If the Government have not the power to appoint an 'ad hoc' Committee

under Section 232, as we are satisfied that they have not, they cannot have the power to appoint the Collector as the Administrator under that section.

15. We, therefore, allow this application & hold that the order dated 21st June, 1951, published in the Rajasthan Gazette of 23rd June, 1951, is 'ultra vires' the powers of the State of Rajasthan. We, therefore, prohibit opposite parties Nos. 2 to 14 from exercising and performing the powers and duties of the Jodhpur Municipal Board, as they have no warrant to act as such under that order. The applicant will get his costs of this proceeding from the State.

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