

Madhoram Vs. the State

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Court : Rajasthan

Decided On : Jan-10-1952

Reported in : AIR1953Raj149

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

Acts : Bikaner Municipal Act, 1923 - Sections 172; [Constitution of India](#) - Article 226

Appeal No. : Civil Misc. (Writ) Case No. 62 of 1951

Appellant : Madhoram

Respondent : The State

Advocate for Def. : Mansharam, Govt. Adv.

Advocate for Pet/Ap. : Murlimanohar, Adv.

Disposition : Application dismissed

Judgement :

Wanchoo, C.J.

1. This is an application by Madhoram Swami under Article 225 of the [Constitution of India](#). The case of the applicant is that he is an elected member of the Municipal Board, Sardarshahar, and was elected its President on 31-3-1951. On 18-8-1951

he received an order intimating to him that the Municipal Board had been superseded and the Tehsildar had been appointed Administrator till the reconstitution of the Board after fresh elections. Certain reasons were mentioned in the order superseding the Board. The applicant's case is that the order of supersession was mala fide and the Government had conducted no enquiry and had given no chance to the Municipal Board to explain before passing the order.

2. The application was opposed by the State of Rajasthan. The case of the State is that there were constant complaints of maladministration by the Municipal Board and it was reported that there was embezzlement of Municipal funds. On receipt of these reports, the Government got the accounts audited by an Accounts Officer who reported that the affairs of the Board were in a very deplorable state. Thereupon, the Government deputed an accounts knowing man as Executive Officer for the Board but the President and the Board instead of co-operating with the said officer persistently put obstacles in his way and eventually suspended him, thus setting at naught the efforts of Govt. to improve the affairs of the Board. It is denied that Government was actuated by any base motive or that the order was mala fide. It was asserted that the order was passed after the Government was satisfied on reviewing the report of its own officer that the Board was persistently making default in the performance of its duties and was abusing its powers. As to giving an opportunity to the Board to explain, the reply of the State is that a copy of the Audit report was sent to the Board which, therefore, knew of the specific instances of embezzlement that had been found. It was finally contended that the petitioner had an alternative remedy, namely, filing a suit and, therefore, the application should be dismissed.

3. It will appear that there are two main points which have been urged in support of the application namely, (1) that the order was mala fide and (2) that the order was passed without giving a chance to the Board to explain and was therefore ultra vires.

4. So far as the question of mala fides is concerned, we are of opinion that the applicant has not established any case of mala fides. A perusal of the reply filed on behalf of the State makes it clear that there is no case of mala fides and the

applicant cannot succeed on that ground.

5. It is the second ground that has been particularly urged on behalf of the applicant namely, that the Board was not given an opportunity to explain the charges against it and, therefore, the order of supersession was ultra vires. We may in this connection set out Section 172 Bikaner Municipal Act (Act 6 of 1923) under which the order in question was passed. That section reads as follows:

'172. (1) Should a board be incompetent to perform, or persistently make default in the performance of, the duties imposed on it by or under this or any other Act, or exceed or abuse its powers, His Highness' Government may, with the previous approval of His Highness, by notification, in which the reasons for so doing shall be stated, declare the board to be superseded: Provided that, in case of public emergency, such notification may be issued without the previous approval of His Highness but shall be forthwith reported to His Highness and shall be subject to His Highness' orders.'

6. It will be clear that this section does not specifically provide for calling for an explanation from the board before an order for its supersession is passed. Generally speaking, most municipal acts provide for such explanation being taken before an order of supersession is passed. For example, Section 30, U. P. Municipalities Act which provides for supersession of the Board is in these terms:

'If at any time the Provincial Government is, after taking into consideration the explanation of the board, satisfied that the board persists in making default in the performance of any duty or duties imposed on it by or under the Act or any other enactment or is exceeding or abusing its powers, it may by order with the reasons therefor published in the official Gazette, dissolve the Board or supersede it for such period as may be specified.

Provided that before making an order superseding the Board, or an order that the Board including the President be dissolved, the Provincial Government shall give an opportunity to the President to show cause, if any, and also to explain his conduct with respect to any charges made against him.'

7. Learned counsel urges that it is one of the principles of natural justice that a person or body against whom or which an order is to be passed should be given a chance to explain his or its conduct and in so far as it has not been done in this case the order of supersession is ultra vires. It is not denied on behalf of the State that no explanation was definitely called from the Board before the order of supersession was passed. Reliance is placed in this connection on --'Lapointe v. L' Association De Bienfaisance Et De Retraite De La Police De Montreal', (1906) AC 535 (A) where Lord Macnaghten repeated with approval what had been said in previous cases by Jessel M. R. (539).

8. 'It contains,' he says,

'a very valuable statement by the Lord Chief Baron as to this view of the mode of administering Justice by persons other than judges who have judicial functions to perform which I should have been very glad to have had before me on both those club cases that I recently heard, namely, the case of --'Fisher v. Keane', (1879) 11 Ch. D. 353 (B) and the case of --'Labouchere v. Earl of Wharncliffe', (1880) 13 Ch D 346 (C). The passage I mean is this, referring to a committee: 'They are bound in the exercise of their functions by the rule expressed in the maxim 'Audi alteram partem,' that no man should be condemned to consequences resulting from alleged misconduct unheard, and without having the opportunity of making his defence. This rule is not confined to the conduct of strictly legal tribunals, but is applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals.' '

9. This case was quoted with approval in --'Indumati Devi v. Bengal Court of Wards', AIR 1938 Cal 385 (D) in which it was held; 'Where departments of Government or statutory bodies are given judicial or quasi judicial functions the Courts will interfere to prevent the exercise of such functions in a non-judicial manner.'

10. Reference was also made to -- 'Province of Bombay v. Khusaldas S. Advani', AIR 1950 SC 222 (E) where the late Kania C. J. drew a distinction between judicial and quasi judicial functions on the one side and administrative or ministerial order on the other. He quoted with approval the words of Atkin L. J. in -- 'Rex v.

Electricity Commissioners', (1924) 1 KB 171 (F) to this effect:

'Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs.'

11. Kania C. J. emphasized the words 'having the duty to act judicially' and observed as follows at page 225:

'Every decision of the executive generally is a decision of fact and in most cases affects the rights of someone or the other. Because an executive authority has to determine certain objective facts as preliminary step to the discharge of an executive -junction it does not follow that it must determine those facts Judicially. When the executive authority has to form an opinion about an objective matter as a preliminary step to the exercise of a certain power conferred on it, the determination of the objective fact and the exercise of the power based thereon are alike matters of an administrative character and are not amenable to the writ of certiorari.'

12. He then examined the scheme of the Bombay Act which was under consideration in that case and came to the conclusion that the order of requisition in that case was a purely executive act and not a quasi judicial decision, This view was approved by the majority of the Court.

13. We have, therefore, to see whether the order which the Govt. passed under Section 172, Bikaner Municipal Act is a quasi judicial order or an order of executive nature. We are of opinion that the order which is passed by the Government under this section is a purely administrative order and not a quasi judicial order. Learned counsel for the applicant, however, urges that looking to the words of this section, the order passed by the Government must be taken to be a quasi judicial order because the test to be applied in this case is an objective test and not a subjective one. It is well settled that where the test is subjective the opinion of the authority is final and it is not open to a Court to test the grounds on which the opinion is based. It is, however, urged that Section 172 does not

anywhere mention that it is the satisfaction or the opinion of the Government which determines the matter. In this connection, our attention is drawn to Section 16 where in a number of clauses the words 'in the opinion of His Highness' Government' appear. It is, therefore, submitted that if the intention of the legislature was that the test to be applied with respect to Section 172 was a subjective test and the opinion of the Government was final, some words to that effect) would have been used to show that it was the opinion or the satisfaction of the Government which was intended by the section. There is no doubt that Section 172 does not contain words to that effect. We may in this connection refer to the case of -- 'Rex v. Secy, of State for Home Affairs, Ex parte Greene', (1942) 1 KB 87 (G). In that case, the words 'If the Secretary of State has reasonable cause to believe any person to be of hostile origin or association etc'. Came to be considered and it was urged that the Court had a duty to enquire into the facts and satisfy itself on that issue and the onus of proof was on the Home Secretary who in making the order was exercising a quasi judicial function. It was held by Scott L. J. that this contention was wrong and the Home secretary's capacity was purely executive and the words 'reasonable cause' could not be properly construed as

'imposing an objective condition precedent of fact, on which a person detained would be entitled in any legal proceedings to challenge the grounds for the Secretary of State's honest belief, either by requiring disclosure of the confidential information which he had received in the course of his official duty, or by tendering evidence that there was in fact no reasonable cause.' (p. 99)

14. Scott L. J. further went on to say (p. 99)

'I agree that this meaning would have been made more obvious if the words 'in his opinion', had preceded the words 'reasonable cause', but that difference of language is not, in my opinion sufficient to refute the conclusion I have expressed.'

15. It seems to us, therefore, that the absence of the words 'in the opinion of' from Section 172 would not turn the order from an administrative order into a quasi judicial decision. We are also of opinion that the words 'in the opinion of' must be understood to be implicit in this section. In any case, the absence of these words will make no difference and the test would still have to be subjective.

16. The question which arises then is whether where the order is of an administrative nature and the test is a subjective one and the opinion of the Government is final, it is necessary that the board should be given an opportunity to explain before the order of supersession is passed. The answer to this question, in our opinion, depends upon the words of the section providing, for supersession, if the section itself provides that the board should be given an opportunity to explain, an order passed without giving an opportunity to the board to explain would be in excess of the powers and liable to correction under Article 226 of the [Constitution of India](#). But where the section does not provide for giving an opportunity to the board to explain, an order passed without calling for an explanation from the board would not be open to attack on the ground that no explanation was called from the board, however desirable it may appear that a drastic order like that of supersession should not be passed without taking the explanation of the board. The reason for this is that principles of natural justice which learned counsel for the applicant invokes are only applicable when as in the words of Atkin L. J. quoted above it is the duty of a body of persons having legal authority to determine question affecting the rights of subjects to act judicially. In the present case, the order being of an administrative nature, it cannot be said that it was the duty of the Government to act judicially and, therefore, its failure to call for a definite explanation from the board would not, in our opinion, invalidate the order which, as it stands, is in accordance with Section 172.

(17) Learned counsel urges in the end that the fact that the section itself says that reasons would be given in the order shows that the order was of quasi judicial nature or at any rate the test was objective. There is no force in this argument. It may be that the law has provided for giving the reasons in the order so that the citizens of the place may come to know why the municipal board has been superseded in order that in the-next election, they may elect better persons. We are, therefore of opinion that the order of supersession passed in this case cannot be challenged under Article 226.

18. We, therefore, dismiss the application with costs to the State. We fix Rs.80/- per day of hearing as counsel's fee.

