

State of Rajasthan and anr. Vs. Bhanwar Lal Verma and ors.

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Court : Rajasthan

Decided On : Jul-10-2001

Reported in : AIR2002Raj11; 2001(3)WLC350; 2001(3)WLN663

Judge : Ar. Lakshmanan, C.J. and; Bhagwati Prasad, J.

Acts : Rajasthan Municipalities Act, 1959 - Sections 9 and 63; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151 and 152; Income Tax Act - Sections 154

Appeal No. : D.B. Civil Special Appeal No. 543 of 2001

Appellant : State of Rajasthan and anr.

Respondent : Bhanwar Lal Verma and ors.

Advocate for Pet/Ap. : Kailash Joshi, Adv.

Disposition : Writ appeal dismissed

Judgement :

Lakshmanan, C.J.

(1). Heard the learned counsel for the appellants,

(2). This appeal is directed against the judgment passed by the learned Single Judge dated 23.4.2001 in S.B. Civil Writ Petition No. 4746/2000 filed by respondent Bhanwar Lal to quash the order dated 12.12.2000 by which the

respondent had been replaced by another nominated member in Municipal Board, Mt. Abu.

(3). We have perused the pleadings and judgment under appeal. The facts and circumstances leading to this case are that the first respondent was nominated by the State Government in exercise of powers u/Section 9 of the Rajasthan Municipalities Act, 1959 (In short, referred to hereinafter as 'the Act') as a member of the Municipal Board, ML. Abu by order dated 16.11.2000 along with one Shri Parmanand which order was published in the Official Gazette on 25.11.2000. However, vide order dated 12.12.2000 Yusuf Khan (respondent No. 4 in the writ petition) was nominated in place of the first respondent Bhanwar Lal and that Government order stood notified in the Official Gazette on 13.12.2000 (Annex. - R/I to the writ petition). Hence the writ petition by Bhanwar Lal.

(4). Before the learned Single Judge it was contended by the learned counsel for the first respondent (herein) that as the Act provides for a particular procedure for removal of the Board's Members by holding enquiry for misconduct, the State could not have removed the first respondent so unceremoniously and that the removal had been made in flagrant violation of the principles of natural justice, nor any charges have been framed under Section 63 of the Act.

(5). The respondent State had taken the plea that respondent No. 4 Yusuf Khan had Initially been nominated and by inadvertence Bhanwar Lal's name had been published in the order, therefore, it required only to issue a corrigendum and not removal of the first respondent (herein) and nomination of respondent No.4.

(6). Yusuf Khan submitted his separate reply that the first respondent Bhanwar Lal had not taken the oath and, therefore, the cannot be deemed to be a Member of the Board and his nomination is inconsequential. It was contended that the first respondent (herein) was removed rightly as he held the office at the pleasure of the Government.

(7). Dr. B.S. Chauhan, J. considered the rival submissions made by the parties and the legal provisions and, in particular, the amended provisions of Section 9 of the Act which authorises the State Government to nominate three members of 10

per cent of the elected members of the municipality, whichever is less, having special knowledge or experience in municipal administration. The second provision thereto reads that the State Government shall have power to withdraw a member nominated under Sub-clause (2) at any time. Learned counsel for the first-respondent (herein) contended that the procedure prescribed u/Section 63 of the Act has to be followed and removal without following the due procedure is impermissible under the law. In support of his contention, reliance was placed on *Kanta Devi and Another v. State of Rajasthan and Others* (1). It was also contended that the Government is permitted to correct a bona fide mistake occurred inadvertently but, in the instant case, it is a case of replacement by respondent No. 4 which is not permissible. The counsel for the State had placed reliance upon the judgment of the Supreme Court in *Om Narain Aggarwal and Others v Nagar Palika, Shahajahanpur and Others* (2), wherein the Supreme Court, in a similar situation, interpreted the analogous provisions of the U.P. Municipalities Act.

(8). We have perused the pleadings and also considered the arguments put forth by Shri Kallash Josh, learned counsel appearing for the appellants. In the instant case, the Government had not issued any notification for removal of the first-respondent (herein) nominating respondent No. 4. The order dated 12.12.2000 (Annex.-3) and notification dated 13.12.2000 provide for a corrigendum to the effect that in place of Bhanwar Lal Verma the name of Yusuf Khan be read. Before the learned Single Judge the appellants had admitted that the respondent (herein) stood nominated by mistake which was rectified by nominating respondent No. 4. In our view, for removal of the first-respondent and nomination of respondent No. 4, corrigendum cannot serve the purpose. The Government ought to have issued a clear notification for removal of the first-respondent and nomination of respondent No. 4 in his place. We have perused the judgments cited before the learned Single Judge, reported in *Commissioner of Sales Tax v. Dunlop India Ltd.*(3) and *Piara Singh v. State of Punjab and Others* (4), wherein the Supreme Court had considered the scope and application of a corrigendum. It was held that corrigendum can be used only to rectify a mistake of clerical or typographical error crept in on account of omission or accidental slip; but, in case it amounts to amendment, then corrigendum is not permissible. Corrigendum may be used only

for rectification of a mistake as permissible under Section 152 of the C.P.C. or Section 154 of the Income Tax Act but it cannot be used to change the order or to withdraw the rights conferred up on the individual.

(9). This Court in *Kandoi Kabliwala v. Asstt. Commercial Taxes Officer, Pali* (5), wherein notification granting exemption to the 'desi sweetmeats' and 'namkins' was issued; by a subsequent notification exemption of tax in respect of 'namkin' was withdrawn and after some time a corrigendum was issued to the notification withdrawing the exemption of tax in respect of 'namkin' making it applicable also to the case of 'desi sweetmeats', quashed the corrigendum holding that by issuing notification the exemption from payment of tax on the sale of 'desi sweetmeats' could not be withdrawn with retrospective effect.

(10). In *Citadel Fine Pharmaceutical v. State of Tamil Nadu and Others* (6), similar question was considered by the Taxation Special Tribunal in which by issuing an errata certain exemptions were withdrawn. The Tribunal held that the two erratas to the notification are illegal in so far as they affect the vested rights of the parties.

(11). In the instant case, impugned corrigendum has been issued to correct any typographical error or omission therein, which tantamounts to withdrawal of the vested rights of the respondent therein. In the instant case, the appellant Government has not sought corrigendum to correct a typographical or arithmetical mistake. It amounts to removal of respondent (herein) and nomination of respondent No. 4. The Government has not issued any notification for that purpose and, therefore, it cannot be permitted to take away the vested rights of the first respondent Bhanwar Lal Verma. The errata is meant correction of the typographical mistake, but it cannot have the effect of law to take away the vested rights and therefore, except for the purpose of correcting typographical errors like spelling mistakes, it cannot have the effect of nullifying the concession given under the original notification.

(12). We, therefore, hold that the corrigendum to the notification is illegal in so far as it relates to the vested rights of the first respondent (herein).

(13). The learned Single Judge allowed the writ petition by placing reliance on various judgments rendered by different High Courts and also by the Apex Court. In any case, in the present case, it cannot be said that there is a corrigendum or arithmetical error. It amounts to removal of the first respondent and nomination of another person which takes away the vested rights of the first respondent (herein). There is no substance in this writ appeal.

(14): In the result, the writ appeal fails and is dismissed. However, the order passed in writ petition by the learned Single Judge or the dismissal of this appeal by us will not stand in the way of the government in following the procedure in accordance with law.

(15). The writ appeal is ordered accordingly.

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