
(2018) 01 MP CK 0217

Madhya Pradesh High Court (Jabalpur Bench)

Case No: Writ Petition No. 13340 Of 2017

Ajay Kumar Shukla

APPELLANT

Vs

State Of Madhya
Pradesh And Ors

RESPONDENT

Date of Decision: Jan. 16, 2018

Acts Referred:

- Constitution Of India, 1950 - Article 226
- Madhya Pradesh Municipalities Act, 1961 - Section 41(A), 51(1)(b)(c), 51(b), 51(c)
- Madhya Pradesh Municipal Accounts Rules, 1971 - Rule 130, 131, 131(3), 132, 133

Citation: (2019) 1 MPLJ 426 : (2018) 2 JLJ 381

Hon'ble Judges: Sujoy Paul, J

Bench: Single Bench

Advocate: K.C. Ghildiyal, Sanjeev Kumar Singh, G.P. Singh, Sankalp Kochar, Vijay Kumar Shukla

Final Decision: Allowed

Judgement

1. This petition filed under Article 226 of the Constitution of India, takes exception to the order dated 23.08.2017 (Annexure-P/5) whereby the State

Government has invoked Section 41-A of the M.P. Municipality Act, 1961 and removed the petitioner from the post of President, Municipal Council,

Nagar Parishad, Semaria. In addition, the petitioner was declared as disqualified to hold the post of President till the next term.

2. The admitted facts between the parties are that a show-cause notice dated 14.03.2017 was issued to the petitioner. The petitioner filed his detailed

reply. An inquiry was conducted and thereafter the impugned order dated 23.08.2017 (Annexure-P/5) was passed.

3. Learned counsel for the petitioner assailed the impugned order by contending that the impugned order is politically motivated. The impugned action

is triggered because of complaint of respondent No.5 dated 23.04.2016 (Annexure-P/2). The respondent No.5 belongs to a different political party

and, therefore, cognizance was taken. The Joint Director, Urban Administration conducted a preliminary inquiry and submitted his report (Annexure-

P/3). Most of the allegations mentioned against the petitioner were not found proved. Yet, mechanically the show-cause notice dated 14.03.,2017

(Annexure-R/2) (with return of respondent No.5) was issued. The petitioner denied the allegations and explained his conduct in great detail.

4. Shri K.C. Ghildiyal, learned counsel for the petitioner submits that the impugned order is bad in law because (a) as per the show-cause notice, the

allegations against the petitioner are relating to purchase of hand pump and water supply material without obtaining sanction from the competent

authority. The allegations are also made about purchase of sanitary material beyond the limit and without obtaining the sanction. It is submitted that a

conjoint reading of Rule 130, 131 and 132 of the M.P. Municipal Accounts Rule, 1971 makes it clear that the said provisions are applicable only in

relation to construction of work or about addition and improvement of the construction work. As per the face value of the allegations mentioned in the

show-cause notice, there is no allegations relating to construction work and, therefore, there exists no violation of the Accounts Rules. For the same

purpose, reliance is placed on the circular dated 30.03.2013 (Annexure- P/9). To elaborate, it is argued that this circular is also related to construction

work whereas in the show cause notice there was no allegations relating to construction work. (b) The allegations in the show cause notice and

findings in the final order are different. (c) The decisions regarding purchase were taken jointly by the competent forum/council. Resolution

(Annexure-P/10) shows the said joint decision. For this joint decision taken, the petitioner cannot be singularly punished. Reliance is placed on 2010 (2)

SCC 319 [Sharda Kailash Mittal vs. The State of M.P. & others.] (d) Removal from the present post is arbitrary exercise of power and it totally

uncalled for and unwarranted. It cannot be said that petitioner's conduct was against the public interest or against the interest of council and alleged

irregularities were so high or of serious nature because of which his continuance as President became totally undesirable. Reliance is placed on 2003

(4) MPLJ 28 [Rajeev Sharma vs. State of M.P. & others.] It is further argued that the order regarding removal of President can be subject matter of

judicial review under Article 226 of the Constitution of India. Another judgment reported in 2009 (4) MPLJ 186 [Baleshwar Dayal Jaiswal vs. State of

M.P. & others] is relied upon to contend that the reasons were not so serious which can result into removal of an elected president.

5. Shri Ghildiyal further contended that when the language of statute is plain and unambiguous, its literal meaning must be seen. Rule 131, 132 & 133

of Account Rules, in no uncertain terms, make it clear that it is applicable on contraction work only.

6. Per-contra, Mr. G.P. Singh, learned G.A. supported the impugned order. He submits that petitioner was given full opportunity of hearing in

consonance with principles of natural justice. There is no fault in the decision making process. He also placed reliance on Rule 131 of the said Rules

and contended that said rule is divided in different parts. A careful reading of Sub-rule (3) of Rule 131 makes it clear that the rule making authority

has used the words ""in all cases"" and then used the words in Clause (i) ""works"" and ""purchase"". The contention of Shri G.P. Singh, learned G.A. is

that Rule 131 is wide enough to include construction work and purchase and therefore, narrow contraction cannot be given to Rule 131.

7. Shri S. Kochar, Advocate appeared for the respondent No.5 and borrowed the same argument so far interpretation of Rule 131 is concerned. In

addition, Shri Kochar placed reliance on documents at page No.66 & 67 of writ petition in order to contend that the amount in question is related with

construction work also. Thus, the petitioner's contention is devoid of substance that Rule 131 is not applicable. Shri Kochar also relied on circular

dated 30.04.2013 and contended that first para of this circular clearly shows that it talks about all works and therefore this circular cannot be given a

restrictive meaning confined to construction work only. Learned counsel for the respondent No.5 supported the impugned order and contended that

when there exists a palpable violation of Account Rules, no fault can be found in the impugned order.

8. No other point has been pressed by the parties.

9. I have heard the parties at length and pursued the record.

10. During the course of arguments, learned counsel for the parties fairly submitted that removal order of petitioner is passed by invoking Section 41

(A) of the Municipalities Act by the state government. Section 51(b) and 51(c) are referred to in the impugned order to show its alleged violation by

the present petitioner. Before dealing with the rival contentions, it is apposite to refer to the relevant provisions.

11. Section 41 A reads as under:

41-A. Removal of President or Vice-President or Chairman of a Committee.-(1) The State Government may, at any time, remove a President

or Vice-President or a Chairman of any Committee, if his continuance as such is not in the opinion of the State Government desirable in

public interest or in the interest of the Council or if it is found that he is incapable of performing his duties or working against the

provisions of the Act or any rules made there under or if it is found that he does not belong to the reserved category for which the seat was

reserved.

(2) As a result of the order of removal of Vice-President or Chairman of any Committee, as the case may be, under subsection (1) it shall be

deemed that such Vice-President or a Chairman of any Committee, as the case may be, has been removed from the office of Councillor also.

At the time of passing order under sub-section (1), the State Government may also pass such order that the President or Vice-President or

Chairman of any Committee, as the case may be, shall be disqualified to hold the office of President or Vice-President or Chairman of any

Committee, as the case may be, shall be disqualified to hold the office of President or Vice-President or Chairman, as the case may be for

the next term:

Provided that no such order under this Section shall be passed unless a reasonable opportunity of being heard is given.

12. Section 51(1)(b)(c) reads as under:

51. Powers and duties of President.- (1) It shall be the duty of the President of the Council-

(a) xxxx;

(b) to watch over the financial and executive administration of the Council and perform such executive functions as may be allotted to him

by or under this Act;

(c) to exercise supervision and control over the acts and proceedings of all officers and servants of the Council in matters of executive

administration and in matters concerning the accounts and records of the Council;

(d) xxxxx

13. The respondents have made the following allegations in the show cause notice dated 14.3.2017 (Annexure R-2):

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14. A plain reading of the show cause notice shows that allegations against the petitioner are confined to committing the alleged irregularity in the

matter of purchase of hand pump and water supply material and purchase of sanitary material. The allegations are made that petitioner has purchased

these materials beyond his financial competence. He has not obtained permission/sanction from the competent authority.

15. The impugned order shows that the government reproduced the charges levelled against the petitioner and then reproduced the reply of the

petitioner. The government then referred the opinion of Joint Director on each of the allegations and thereafter in internal page 4 of the order assigned

reasons for holding the petitioner as guilty. The reasons assigned by the government reads as under:

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5,96,000/- 1961 -51

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1998 -8

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1971 -131 (3)

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-15--1-07/07/18-3 20 2007 5.00

, 5.00 50.00

- 79

[Emphasis supplied]

16. On the basis of aforesaid reasons, the conclusions are drawn in the last paragraph of this order. A careful reading of the reasons assigned shows

that the finding of government is that the petitioner has wrongly interpreted the account rules. If the said reasons are carefully examined, it will be

clear that there is no finding against the petitioner that he has misappropriated or misutilised the amount. The only finding is that petitioner has wrongly

interpreted the provisions.

17. Thus, the first question is that whether on the basis of said reason it can be said that his continuance as President is not desirable/permissible in

public interest or in the interest of the Council. At the cost of repetition, in my opinion, unless there exists a finding that such an act of the petitioner

has caused any severe loss to the public interest or because of such act, the public interest or interest of council is badly hampered, Section 41-A

cannot be invoked.

18. This is trite law that every mistake, error of judgment, lack of efficiency etc. cannot be a reason to punish somebody. In 1979 (2) SCC 286 (Union

of India Vs. J. Ahmed), the Apex Court held as under:

However, lack of efficiency, failure to attain the highest standard of administrative ability while holding a high post would not themselves

constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in

evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences

directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of

culpability would be very high.

[Emphasis Supplied]

19. The ratio decidendi of J. Ahmed (supra) was followed by Supreme Court in 2006 (3) SCC 736 (Punjab State Civil Supplies Corporation Ltd. Vs.

Sikander Soni). The Apex Court held that a single act of omission or error of judgment would not attract penal action unless such error or omission

results in serious or atrocious consequences. The Supreme Court considered the judgment of P.H. Kalyani Vs. Air France, Calcutta, AIR 1963 SC

1756 in this regard. If the present case is tested on the anvil of the principles laid down in these cases, it will be clear like noon day that the petitioner

was held responsible for wrongly interpreting the rules. This may be an error of judgment or negligence but is not serious enough to attract Section 41-

A of the Municipalities Act.

20. This Court in the case of reported in 1999 (1) MPLJ 368 [Kaushlayabai Vs. State of M.P.] held that removal of President of Nagar Panchayat

can be done when the charges of such serious nature as to warrant the grave action of removal. The power under Section 41-A is an extraordinary

power which can be invoked sparingly. This power cannot be invoked on a trivial irregularity. The relevant para reads as under:

Section 41-A of the M.P. Municipalities Act, 1961 as introduced by amendment act No.18 of 1997 w.e.f. 21-04-1997 confers an

extraordinary and overriding power on the State Government to remove an elected office bearer of a local authority or committee under it

on formation of an opinion that continuance of such office bearer is ""not desirable in public interest"" or ""in the interest of the counsel"" or

that ""he is incapable of performing his duties or is working against the provisions of the Act or any Rules"" made thereunder. For taking

action under Section 41-A of removal of President, Vice President or Chairman of any Committee, power is conferred on the State

Government with no provision of any appeal. The action of removal casts a serious stigma on the personal and public life of the concerned

office bearer and may result in his disqualification to hold such office for the next term. The exercise of power, therefore, has serious civil

consequences on the status of an office bearer. The nature of power is such that it has to be exercised on an opinion objectively formed by

the State Government. The misconduct or incapacity of the office bearer should be of such magnitude as to make his continuance

undesirable in the ""interest of counsel"" or ""in public interest"". There are no sufficient guidelines in the provisions of Section 41-A as to the

manner in which the power has to be exercised except that requires that reasonable opportunity of hearing has to be afforded to the office

bearer proceeded against. Keeping in view the nature of the power and the consequences that flow on its exercise such power can be

invoked by the State Government only for very strong and weighty reason. Such a power is not to be exercised for some trivial or minor

irregularities in discharge of duties by the holder of the elected post. The material or grounds on which the action is taken should be such

as to justify the exercise of drastic power of removal of the office bearer with consequence of his disqualification for another term. The

provision has to be construed in the strict manner because the holder of office occupies it by election and he is deprived of the office by an

executive order in which the electorate has no chance of participation.

21. In *Rajeev Sharma (supra)*, this court again emphasized that removal of President can be only in public interest and irregularities alleged should be

of such serious nature that continuance of such person as President is undesirable. It was held that power under Section 41-A of the Act of 1961, is to

be exercised by the State Government for removing an elected office bearer from his office. Meaning thereby that the State Government is acting

against the wishes and mandate of the people who have elected the incumbent into office. Accordingly, the opinion with regard to feasibility of

keeping such a person in office or the desirability of removing him in public interest has to be viewed objectively and the irregularities or allegations

alleged should be of such serious nature and of such magnitude that continuation of such a person is undesirable. Court cannot sit over the decision of

the State Government as an appellate forum and scrutinies the action as if it is deciding an appeal against the order of the State Government, but in the

backdrop of the legal principle enumerated hereinabove, in matters concerning removal of democratically elected people, this Court can very well look

into the matter to find out whether the removal is based on cogent and compelling reasons, whether interest of the public, interest of the Council have

been properly considered, whether material on the basis of which action has been taken is of such a nature that the persons can be held to be

responsible for having misused his office to such an extent that retaining him in the office will have serious and far reaching consequences in the

interest of the Council and ultimately the public at large. This Court can always look into the matter to find out whether conditions and circumstances

extraneous to the main purpose of the statute are being achieved by exercise of its power. The case after appreciating the material on record, this

Court comes to a conclusion that the irregularities or misconduct alleged are nothing but some discrepancies or irregularities which cannot be

contemplated to and directly attributable to the persons certainly power of judicial review can be exercised. In view of the material available on

record, it is clear that even if the entire factors are admitted, they can at best be said to be irregularities mainly procedural in matter and there is

nothing on record to individually single out the petitioner to be responsible for having misused his office. The material on record does not disclose that

the petitioner is guilty of charges so serious in nature so as to warrant taking action against him under Section 41-A. Consequently, this Court finds

that the material on record with regard to the allegations made against the petitioner are not of such a serious nature so as to warrant taking of drastic

action in exercise of the extra-ordinary power for removing him from office under Section 41-A of the Act of 1961. Prakash Shrivastav J. followed

the said ratio in Baleshwar (supra) and held that it is the settled position in law that the action of the Government has to be reasonable and it cannot be

held that Section 41-A gives arbitrary unbridled and discretionary power to the State to remove the elected president on trumped up charges not

adequately proved or unreasonably accepted. The State is required to form an opinion in respect of the misconduct or incapacity objectively. Since the

exercise of power under Section 41-A has serious consequence, therefore, it can be invoked only for very strong and weighty reasons and the

material on the basis of which such action taken must justify such a serious action. It cannot be ignored that by exercising this power, the State

removes a democratically elected President, therefore, such a power cannot be exercised for trivial reasons or the material which is inadequate for

taking the action. Reliance was also placed on 1991 (1) MPLJ 368 and 1958 MPLJ 531.

22. In view of the principles laid down in these cases, the respondents have not rightly invoked section 41-A of the Municipalities Act. Apart from this,

the Supreme Court in Sharda (supra) held that if decision regarding tender and payment of salary etc. is made by entire President-in- Council by

taking collective responsibility, the appellant alone cannot be singled-out. For this reason also, the impugned order by which only one elected

representative is removed, cannot be countenanced.

23. During the course of arguments, learned counsel for the parties advanced diametrically opposite interpretation of Rule 131 of said Rules. As

noticed, the petitioner is held responsible for wrongly interpreting the rules and there is no finding that the petitioner has done it with any oblique

motive. Similarly, there is no finding that petitioner's act has caused loss/damage to public interest or interest of the council. In absence of any such

reasons and findings, Section 41-A which is a drastic provision could not have been invoked. In view of this finding, the argument regarding

interpretation and applicability of Rule 131 pales into insignificance and same is left open to be decided in an appropriate case.

24. In view of aforesaid analysis, the impugned order dated 23.08.2017 (Annexure P/5) cannot sustain judicial scrutiny. The order dated 23.08.2017 is

accordingly set aside. Petition is allowed.