

(2011) 03 AHC CK 0369

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 7849 of 2011

Abdul Aziz Ansari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: March 3, 2011

Acts Referred:

- Municipalities Act, 1916 - Section 48, 48(2), 48(2A)

Citation: (2011) 4 ADJ 146 : (2011) 8 RCR(Civil) 1841

Hon'ble Judges: F.I. Rebello, C.J; Vineet Saran, J

Bench: Division Bench

Final Decision: Allowed

Judgement

1. The Petitioner was elected as President of Nagar Palika Parishad, Kairana, Muzaffar Nagar and took charge of the said office on 16.11.2006. The term of office of the Petitioner is five years. In the preceding five years term also, the Petitioner was elected and functioned as President of Nagar Palika Parishad. On 20.1.2009, a complaint was lodged by the two members of the Nagar Palika Parishad, which related to the business of the Parishad conducted during the term prior to 2006 as well as for the current term. On 27.8.2009, the Petitioner was issued a show cause notice by the State Government as to why the Petitioner may not be removed from the office of the President under Sections 48(2)(a) and (b)(vi)(xi)(xiv) of the Municipalities Act, 1916 (hereinafter referred to as the "Act"). By the said order itself, the financial and administrative powers of the Petitioner were ceased under the proviso to Section 48 of the Act. The Petitioner thereafter submitted his detailed pointwise reply to the Respondent No. 1 on 11.9.2009. Since no order was passed, the Petitioner filed a writ petition No. 48338 of 2009 challenging the ceasure of his financial and administrative powers. By order dated 4.2.2010 passed in the aforesaid writ petition, the order ceasing the financial and administrative powers of the Petitioner vide order dated 27.8.2009 had been stayed by this Court but it was provided that the enquiry may proceed. Challenging the said interim order, the

State Government filed a SLP No. 17031 of 2010 in which no interim order was granted and subsequently the SLP was dismissed by the Apex Court. It was only on 23.6.2010 that the financial and administrative powers of the Petitioner were restored. Since further proceedings in pursuance of the notice were not stayed, on 28.12.2010 the Petitioner was given an opportunity of hearing by the Respondent No. 1, on which date the Petitioner also filed his written submissions. Then by order dated 27.1.2011 passed by the Respondent No. 1 (State of UP through Principal Secretary, Nagar Vikas, Lucknow), the Petitioner has been removed from the office of the President of Nagar Palika Parishad, Kairana, Muzaffar Nagar. Challenging the said order, this writ petition has been filed.

2. We have heard Sri P.N. Saxena, learned Senior Counsel assisted by Sri Amit Saxena, learned Counsel appearing for the Petitioner as well as learned Standing Counsel appearing for the Respondents and have perused the averments made in the writ petition as well the counter-affidavit filed by the Respondents.

3. The submission of learned Counsel for the Petitioner is that the impugned order has been passed u/s 48(2)(a) of the Act, which gives the power to the State Government to remove the President only if there has been a failure on the part of the President in performing his duties. It is contended that the charges levelled against the Petitioner cannot be termed as failure on the part of the President in performing his duties, which is the ground for removing of the Petitioner. The charges can be divided in two sets, one which relates to fixation of annual rent of five houses and land, which was fixed at less than rental value, and the other regarding transfer of tenancy rights of nine shops, out of which eight shops were transferred in the preceding term which ended in 2006, and only one with regard to the current term, for which explanation had been given by the Petitioner in his detailed pointwise reply running in over 15 pages. Learned Counsel for the Petitioner has vehemently argued that though show-cause notice as well as opportunity of hearing was given to the Petitioner, in response to which the Petitioner had submitted his detailed pointwise reply and had also given his written submissions at the time of hearing but none of them have been considered by the Respondent No. 1 while passing the impugned order, and all that has been stated is that no material evidence or ground has been given in the reply so as to discharge the Petitioner of the charges. It is, thus, submitted that the impugned order has been passed by the Respondents in a mechanical manner without application of mind and without considering the pointwise reply and written submissions of the Petitioner and as such, the impugned order is liable to be set aside.

4. Learned Standing Counsel has however submitted that the order finds support from the reports of District Magistrate and Sub-Divisional Magistrate and as such the said order should be considered in the light of the said reports, and he thus submits that the order is fully justified. On being asked, learned Standing Counsel could not make a statement as to whether the reports of the District Magistrate and

Sub-Divisional Magistrate had been provided to the Petitioner before passing of the impugned order. It has been further submitted that the order having been passed u/s 48(2A) and not u/s 48(2)(a) is fully justified as, according to the learned Standing Counsel, by UP Act No. 6 of 2004 Sub-section (2A) had been inserted to provide that where after enquiry the President is found to be guilty of any of the grounds referred to in Sub-section (2), he shall cease to exercise, perform and discharge the financial and administrative powers, functions and duties of the President, which shall, until he is exonerated of the charges mentioned in the show-cause notice issued to him under Sub-section (2), be exercised and performed by the District Magistrate or by an officer nominated by him not below the rank of the Deputy Collector.

5. According to the learned Counsel for the Petitioner, the said Sub-section (2-A) has been omitted by UP Act No. 2 of 2005 and as such would have no relevance to the facts of the present case.

6. Perusal of the impugned order dated 27.1.2011 would go to show that the relevant charges have been mentioned in the said order and just below each charge, a brief synopsis of the reply has been given. In the end all that has been stated is that the Petitioner had been given personal hearing on 28.8.2010 on which date written submission was also filed, in which it was mentioned that the complainant had stated that he had not lodged any such complaint nor signed the same and as such the complaint was false, which could not be the basis of initiating proceeding against the Petitioner. After recording this, in six lines the entire evidence and submissions of the Petitioner have been discarded by merely stating that no material evidence or ground has been placed to dispute the charges and hence exercising power u/s 48(2)(a) of the Act the Petitioner is removed from the office of Nagar Palika Parishad, Kairana, Muzaffar Nagar.

7. This is a shocking way of dealing with the complaint and the reply submitted, leading to the removal of an elected President of Nagar Palika Parishad. Merely completing the procedure and formality of issuing notice and receiving the reply to the notice and giving opportunity of hearing is not sufficient. What is to be seen is that the reply to the show cause notice, which in the present case is detailed point wise reply, has been considered by the authority or not. In the reply, the Petitioner has given clear reasons for fixing of annual rental value at below the actual rent received and also for transfer of tenancy rights of the shop in question, which all was done after the necessary resolution was passed by the Members of the Nagar Palika and not by the President alone. What we find from the impugned order is that the explanation given by the Petitioner has not been dealt with or considered by the Respondent No. 1 while passing the final order.

8. Foundation of democracy in our country is laid down at the grass root level. In the villages, Gram Pradhans are democratically elected by the people. In towns and cities, the Members and President of Nagar Palika Parishad are elected by the

people under the provisions of the Municipalities Act. It is this democratic process, which begins from the grass root level and goes upto the election of the Members of Legislative Assemblies and the Parliament, which runs the State Governments and the country. At the lower level, the village panchayats and local bodies are elected by the people so that people, through their representatives, have their say in the running of the local bodies. No doubt the power to either cease the financial and administrative powers or the removal of a duly elected President of Nagar Palika Parishad is provided in the Act itself, but the same has to be exercised with caution and not in a routine manner at the whims and fancies of the authorities so as to disturb the very fabric of democracy and shake the foundation of a body duly elected by the people. Parliament has recognized the role of local bodies, specially the Panchayats and Municipalities by amending the Constitution and making Constitutional provisions in the matter of term of office and other conditions.

9. In the present case, what we see is that the entire exercise has been undertaken by the Respondent authorities with a predetermined mind, throwing to the winds the entire procedure prescribed in law. This is evident from a plain reading of impugned order as well as the conduct of the Respondents while dealing with a serious matter of removal of the Petitioner who is a democratically elected President of Nagar Palika Parishad. Neither his reply has been properly considered nor written submissions taken into account, except for a mere mention in the order that nothing material has been stated therein. If this is permitted, then in every case all replies, arguments and submissions can always be brushed aside in a sentence by stating that nothing material has been argued or submitted and thus the reply or submission is rejected. Authorities performing quasi judicial functions are obliged to give reasons for not accepting the replies or submissions of a party. This is to ensure that there is nothing arbitrary in the actions of the authorities and that the authority has looked into the matter after applying his mind. In the present case, the same is totally lacking. This Court strongly deprecates the same. What we also notice is that the conduct of the Respondents in the case of the Petitioner earlier also has not been very fair as once after the order ceasing the financial and administrative powers of the Petitioner as President had been stayed by this Court on 4.2.2010, the same was not restored for more than four months till 23.6.2010, without there even being any stay order from the Apex Court in the SLP filed by the Respondents, which was ultimately dismissed.

10. For the aforesaid reasons, we find merit in this petition and are of the opinion that the order dated 27.1.2011 cannot be sustained in the eye of law. Accordingly, this writ petition stands allowed. The order dated 27.1.2011 passed by the Respondent No. 1 is set aside. It shall be open for the Respondents, if they are so advised, to pass fresh orders in accordance with law and after giving adequate opportunity to the Petitioner. If the order be adverse, it is not to be given effect to for a period of two weeks from the date of communication of the order to the Petitioner. We make it clear that since the impugned order has been set aside, the

Petitioner shall be forthwith allowed to function as President with all powers.

11. There shall be no order as to costs.