

(2007) 10 AHC CK 0144

Allahabad High Court

Case No: None

Imran Masood

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Oct. 5, 2007

Acts Referred:

- Uttar Pradesh Municipalities Act, 1916 - Section 48

Citation: (2008) 1 AWC 271 : (2008) 1 UPLBEC 38

Hon'ble Judges: S.P. Mehrotra, J; Amitava Lala, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. The Court: This Writ Petition has been made for quashing the show cause notice dated 13.9.2007 and the consequential order dated 15.9.2007. Therefore, prima-facie, we are of the view that the writ petition has been made challenging the show cause notice which has been issued by the state authorities in accordance with the appropriate law. It is well settled by now that in case only issuance of show cause notice is challenged, Court should not interfere generally because the petitioner has an ample opportunity to file his reply and explain his case before the state authority by whom the show cause notice has been issued.

2. In the instant case, Sri Ravi Kant and Sri S.M.A Qazmi learned senior counsels duly assisted by Sri Mukhtar Alam, learned Counsel appeared in support of the Writ Petition and contended before the Court that the (sic) cause notice is malafide in nature and without jurisdiction, therefore, show cause notice can be challenged. The action on the part of the authority is vindictive in nature.

3. We have gone through the documents annexed in the writ petition as well as in the supplementary affidavits and found that the levelling of charges on the part of the state authorities cannot be held to be malafide. There is a reason for saying so. Various charges were levelled against the petitioner when the State authority made

an enquiry. The state authority has found that some of the charges cannot be levelled against the petitioner since those are not backed by any evidence. Thereafter only for remaining charges, show notice had been issued on 13.9.2007. Had it been the case of malafide, all other charges could have been levelled against the petitioner. There was no occasion for exonerating the petitioner from such other

4. Mr. Ravi Kant, learned Senior Counsel contended before the Court that the allegations which are made has to be based on subjective satisfaction of Section 48 of the Uttar Pradesh Municipalities Act, 1916. There must be reason to believe that the charges which reflect from the show cause notice can be taken into account for the purpose of due consideration. Under the order impugned herein Section 48 (2)(a),(b) Clauses vi,xi,xii) and proviso have been referred. Section 48 (1) and (2) are as under:

48. Removal of President -(1)[...]

(2) Where the State Government has, at any time, reason to believe that--

(a) there has been a failure on the part of the President in performing his duties; or

(b) the President has.

(i) incurred any disqualification mentioned in Section 12-D and 43-AA; or

(ii) within the meaning of Section 82 knowingly acquired or continued to have, directly or indirectly or by a partner, any share or interest, whether pecuniary or any of other nature, in any contract or employment with by or on behalf of the [Municipality]" or

(iii) Knowingly acted as a President or as a President or a member in a matter other than a matter referred to in Clauses (a) to (g) of Sub-section (2) of Section 32 , in which he has, directly or indirectly, or by a partner, any share or interest whether pecuniary or of any other nature , or in which he has professionally interested on behalf of a client, principal of other person; or

(iv) being a legal practitioner acted or appeared in any suit or other proceeding on behalf of any person against the [Municipality] or against the State Government in respect of nazul land entrusted to the management of the [Municipality] or against the State Government in respect of nazul land entrusted to the management of the [Municipality] or acted or appeared for or on behalf of any person,against whom a criminal proceeding has been instituted by or on behalf of the [Municipality];or

(v) abandoned his ordinary place of residence in the municipal area concerned; or

(vi) been guilty of misconduct in the discharge of his duties; or

[(vii) during the current or the last proceedings term of the [Municipalityt], acting as President or Vice-President, or as Chairman of a Committee, or as ember or in any other capacity whatsoever, whether before or after the commencement of the Utter

Pradesh Urban Local Self-Government Laws (Amendment) Act, 1976, so flagrantly abused his position, or so wilfully contravened any of the provisions of this Act or any rule, regulation or bye-law, or caused such loss of damages to fund or property of the [Municipality as to render him unfit to continue to be President

(viii) has been guilty of any other misconduct whether committed before or after the commencement of the Uttar Pradesh Urban Local Self-Government Laws (Amendment) Act, 1976 whether as President or as Vice -President, exercising the powers of President, or as Vice President, or as member;] or

[(ix) caused loss or damage to any property of the municipality; or

(x) misappropriated or misused of Municipal fund; or

(xi) acted against the interest of the municipality; or

(xii) contravened the provisions of this Act or the rules made thereunder; or

(xiii) created an obstacle in a meeting of the municipality in such manner that it becomes Impossible for the municipality to conduct its business in the meeting or Instigated someone to do; or

(xiv) wilfully contravened any order or directions of the State Government given under this Act; or

(xv) misbehaved without any lawful justification with the officers or employees of the municipality; or

(xvi) disposed of any property belonging to the municipality at a price less than its market value; or

(xvii) encroached or assisted or instigated any other persons to encroach upon the land, building or any other immovable property of the municipality;]

it may call upon him to show cause within the time to be specified in the notice why he should not be removed from office.

[Provided that where the State Government has reason to believe that the allegations do not appear to be groundless and the President is prima facie guilty or any of the grounds of this sub-section resulting in the issuance of the show-cause notice and proceedings under this sub-section he shall, from the date of issuance of the show-cause notice containing charges, cease to exercise, perform and discharge the financial and administrative powers, functions and duties of the President until he is exonerated of the charges mentioned in the show-cause notice Issued to him under this sub-section and finalisation of the proceedings under Sub-section (2A) and the said powers, functions and duties of the President during the period of such ceasing, shall be exercised, performed and discharged by/ the District Magistrate or any Officer nominated by him not below the rank of Deputy Collector].

(2-A to (4)....

5. From a plain reading of proviso, it appears that minimal allegation can form ground for issuance of show cause notice. We cannot hold and say that there is no minimum ground for issuance of show cause notice against the petitioner.

6. The petitioner is further apprehensive of the charges which have been curtailed and has not been exonerated from those charges. According to us the authority cannot act de hors the law.

7. Sri Ravi Kant, learned Counsel appearing for the petitioner contended before the Court on the basis of law propounded in income tax case reported in [1981] 12 TR (SC) 1309, Ganga Saran and sons P. Ltd., v. Income Tax Officer and Ors., wherein it is said that it is well settled as a result of several decisions of this Court at two distinct conditions must be fulfilled for the purpose of assuming jurisdiction for issuance of notice in case of reopening of assessment of income tax. Firstly, he must have reason to believe that the income of the assessee has escaped assessment and, secondly, he must have reason to believe that such escapement is by reason of omission or failure on the part of the assessee to disclose material facts for necessary assessment.

8. At first we say that complexity of service jurisprudence and revenue jurisprudence are quite distinct from each other. In further the cases of escapement in income tax is consequential phenomenon of a proceedings already happened but hereunder the ball has not yet rolled. Therefore, question of reason to believe is also distinguishable in both the cases. When the law itself says that show cause notice can be issued by the State if it has reason to believe that the allegations do not appear to be groundless, it requires lowest level of sufficiency.

9. Learned Counsel appearing for the petitioner further contended before the Court that by virtue of subsequent amendment with effect from 27.2.2004, Sub-section (2A) of Section 48 of the Uttar Pradesh Municipalities Act, has been inserted whereas in the original Act, the same was omitted.

10. We have examined the notifications. Under Pradesh Municipalities (Amendment) Act, 2004. Sub-section (2A) of Section 48 was inserted although Sub-section (2A) was pre-existing. Therefore, it was a case of double numbering of the Sub-sections. Subsequently by further amendment, the numbering of such sub-section was deleted by the subsequent notification dated 24.1.2005 giving retrospective effect from 27.4.2004. Therefore, according to us, Sub-section (2A) under original Act survives and still operative particularly in view of the decision of the Division Bench of this High Court dated 18th April, 2007 in C.M.W.P. No. 168309 of 2007 (Girish Chandra Srivastava v. State of U.P. and Ors.).

The contention of Shri Shashi Nandan, learned Senior Counsel appearing for the petitioner is that though Sub-section (2-A) was added after Sub-section (2) to Section

48 of the Act by U.P. Act No. 27 of 1964, yet in view of the amendment made in Section 48 of the Act by U.P. Act No. 6 of 2004 by insertion of Sub-section (2-A) after Sub-section (2) in Section 48 of the Act, it must be deemed that earlier Sub-section (2-A) of the Act stood omitted. He, therefore, submitted that in such a situation, there was no power left with the State Government for removing the President from office as Sub-section (2-A) of the Act which was inserted by U.P. Act No. 6 of 2004 does not empower the State Government to remove the President. He further submitted that in any view of the matter, even Sub-section (2-A) which was inserted by U.P. Act No. 6 of 2004 was subsequently omitted by U.P. Act No. 2 of 2005 with effect from 27/2/2004, i.e. the date when U.P. Act No. 6 of 2004 was published in the U.P. Extraordinary Gazette.

We express our inability to accept this submission. The scheme of Section 48 of the Act provides that under Sub-section (2), the State Government can issue a show cause to the President for removing him from office. Under Sub-section (2-A) of the Act as was inserted by U.P. Act No. 27 of 1964, the State Government could remove the President from office after considering the explanation offered by the President and after making such enquiry as it considered necessary. The bone of contention between the parties is the amendment made in Section 48 of the Act by U.P. Act No. 6 of 2004. As seen above, the State Legislature by the aforesaid amendment added Sub-section (2-A) after Sub-section (2) in Section 48 of the ACT whereas there already existed Sub-section (2-A) in Section 48 of the Act in terms of the amendment made by U.P. Act No. 27 of 1964. What is to be noted is that U.P. Act No. 6 of 2004 does not repeal/omit the existing Sub-section (2-A) of Section 48 and nor does it mention that the existing Sub-section (2-A) was being substituted, It merely mentions that Sub-section (2-A) shall be inserted in Section 48 after Sub-section (2). This, in our opinion, appears to be an oversight on the part of the State Legislature in not noticing that Sub-section (2-A) already existed in Section 48 of the Act of Sub-section (2). The insertion of any further sub-section in Section 48 of the Act could have been either before or after the existing Sub-section (2-A). It needs to be mentioned that Sub-section (2-A) which was inserted by U.P. Act No. 6 of 2004 provides that where in an enquiry the President or a Vice president is found prima facie guilty on 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 or the Vice President, as the case may be, 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 an officer nominated by him not below the rank of the Deputy Collector. Sub-section (2-A) as inserted by U.P. Act No. 27 of 1964, however, empowers the State Government to make a final order in the enquiry made under Sub-section (2) of Section 48 of the Act after issuance of show cause notice. It is, therefore more than apparent that Sub-section (2-A) as inserted by U.P. Act No. 6 of 2004 and Sub-section (2-A) as inserted by U.P. Act No. 27 of 1964 operate in entirely different fields. This apart, the

object and reason for inserting Sub-section (2-A) by U.P. Act No. 6 of 2004 is to cease the financial and administrative powers of the President during the pendency of the enquiry as most of the Presidents used to delay the proceedings by not replying to the show cause notice in time and they continued to misuse their financial powers. It cannot by any stretch of imagination be assumed that by insertion of Sub-section (2-A) by U.P. Act No. 6 of 2004, the State Government intended to divest the State Government of the power to remove the President. Section 48 deals with the power of the State Government to remove the president and it would indeed be ironical that the State Government would possess the power to issue notice for removal and also the power to pass an order divesting the President of his financial and administrative powers for the interim period but would have no power to pass an order for removal of the President. It is, therefore, more than apparent that there is a mistake in numbering the Sub-section (2-A) that was inserted by U.P. Act No. 6 of 2004 in Section 48 of the Act. The view which we have taken finds support from the contents of the proviso added to Sub-section (2) of Section 48 of the Act by U.P. Act No. 2 of 2005. It provides that where the State Government has reason to believe that the allegations do not appear to be groundless and the President is prima facie guilty on any of the grounds of this Sub-section resulting in the issuance of the show cause notice and proceedings under this sub-section, he shall, from the date of issuance of the show cause notice containing charges, cease to exercise, perform and discharge the financial and administrative powers, functions and duties of the President until he is exonerated from the charges mentioned in the show cause notice issued to him and finalisation of proceedings under Sub-section (2-A). It is, therefore, clear that proviso that was added to Sub-section (2) of Section 48 of the Act by U.P. Act No. 2 of 2005 is almost identical to Sub-section (2-A) of Section 48 of the Act that was inserted by U.P. Act No. 6 of 2004 and it provides that the President shall cease to exercise, perform and discharge the financial and administrative power until he is exonerated of the charges mentioned in the show cause notice and the finalisation of the proceedings under Sub-section (2-A). The State Legislature was thus conscious of the fact that Sub-section (2-A) contained in Section 48 of the Act that was added by U.P. Act No. 27 of 1964 existed because it is only under the said Sub-section (2-A) that proceedings on the basis of the show cause notice are finalised. We, therefore, repel the contention of the learned Senior Counsel that Sub-section (2-A) contained in Section 48 of the Act as was added by U.P. Act No. 27 of 1964 should be deemed to have been omitted by the amendment made in Section 48 of the Act by U.P. Act No. 6 of 2004.

11. Therefore, taking into the totality of the matter, we are of the view that the writ petition cannot be admitted, and the same is liable to be dismissed and accordingly dismissed.

12. No order is passed as to costs.

13. However, Since the respondents are ready and willing to give appropriate opportunity of hearing and the enquiry, if any, will be made and reasoned order will be passed within the reasonable time as given by this Court, we of the view that same will be complied with preferable within a period of two months from date of communication of the order.