(1974) 04 CAL CK 0017

Calcutta High Court

Case No: Civil Rules No. 2625 (W) of 1972

Ramdas Ramanju Das and Others		APPELLANT
	Vs	
State of West Bengal and Others		RESPONDENT

Date of Decision: April 11, 1974

Acts Referred:

- West Bengal Panchayat Act, 1957 - Section 67

Citation: 78 CWN 835

Hon'ble Judges: Anil K. Sen, J

Bench: Single Bench

Advocate: Sudhis Das Gupta and Pradipta Roy, for the Appellant;Prithwi Ranjan Guha (Amicus Curaie), for the Respondent

Final Decision: Allowed

Judgement

Anil Kumar Sen, J.

An important question which arises for consideration in this rule is as to whether respondent No. 1, the State of West Bengal could validly supersede the Commissioners of the Chandrakona Municipality in exercise of its powers u/s 553 of the Bengal Municipal Act without giving any opportunity to such Commissioners to show cause against such action. The eight petitioners are disputing validity of two orders both dated April 28, 1972 passed by the State Government--one superseding the Commissioners u/s 553 of the Act and the other investing the local Block Development officer with all the powers of the Commissioners u/s 554(1) (bb). The petitioners along with respondents 6 and 7 being elected commissioners of the Chandrakona Municipality assumed office on. April 22, 1968. Petitioner No. 1 was elected the Chairman and the respondent No. 7 was elected Vice Chairman. Petitioner No. 1 delegated all his powers to the respondent No. 7 u/s 52 of the Act. Various amounts were advanced from time to time by the Municipality to respondent No. 7 on different heads of expenditures which the said respondent No.

7 failed to account for. A representation was received from the employees also complaining about the various irregularities committed by respondent No. 7. On June 28, 1971, the powers delegated to respondent No. 7 were withdrawn and the Commissioners gave a notice to respondent No. 7 for removing him from the office of Vice-Chairman. At a duly convened meeting held on September 4, 1971 respondent No. 7 was removed from the office of Vice-chairman. The Commissioners lodged an information with the police station as against respondent No. 7 complaining of various illegalities and mis-appropriation of funds. On a similar complaint lodged with the District Magistrate by the Commissioners an enquiry was made through a Deputy Magistrate who on an enquiry found respondent No. 7 guilty of misappropriation of Municipal Funds and properties. All these event took place in or about August/September 1971. In the meantime as the tenure of office of the commissioners was coming to an end necessary arguments for the general election was, being made. Date of such election was notified but was adjourned on a few occasions and ultimately it was fixed for September 24, 1972. Preliminary electoral rolls were published on April 20, 1972. Objections were invited and received by the Municipality when the Commissioners were served with the impugned order dated April 28, 1972. The Order is set out hereunder : --
Government of West Bengal

Department of Municipal Services

Order

No. 2451/MIM-65/71.

Dated, Calcutta, the 28.4.1972

2. Whereas in the opinion of the Governor the Commissioners of the Chandrakona Municipality--

(1) have shown in-competency to perform the duties imposed on them by an under the Bengal Municipal Act 1932 (Bengal Act XV of 1932).

(a) in not being able to exercise effective supervision and control on the action of the Vice-chairman of the said Municipality who (i) abused and misused the powers of the Chairman delegated to the said Vice-Chairman under the provisions of the said Act by misappropriating the municipal fund meant for the salary of the employees of the said municipality.

(ii) took advances from the municipal fund on different occasions for work of the said municipality but the advances have not been adjusted fully and "the rules governing municipal accounts have thereby been violated.

(iii) removed some properties of the said municipality to his own house and has not returned the said properties.

(b) in not being able to check the serious deterioration in the administration of the said Municipality caused by party faction which has adversely affected the efficiency of the said Municipality and has allowed its employees to take advantage of the internecine dissensions and to indulge in ulterior politics to the detriment of their normal duties and the interests of the rate-payers;

(2) have persistently made default in the performance of the duties imposed on them by and under the said act and have exceeded and abused their powers--

(i) by utilising govt. grants for purposes other than for which the grants were made;

(ii) by not attending the audit objection since 1963-64 in spite of reminders;

(iii) by not submitting the Annual Administration Reports as required under sub-section (1) of section 93 of the said Act.

3. And whereas there is misappropriation of the municipal fund and persistent default in the performance of duties of the Commissioners of the said Municipality.

4. Now, therefore, in exercise of the power conferred by sub-section (1) of section 553 of the Bengal Municipal Act, 1932 (Bengal Act XV of 1932), the Governor is pleased hereby to declare the Commissioners of the said Chandrakona Municipality to be incompetent, to be in default, and to have exceeded and abused their powers, and supersede them for a period of 3 years with effect from 2nd May, 1972.

By order of the Governor,

Sd/H.C. Datta,

Secy to the Government of West Bengal.

5. By a similar order hearing the same date passed u/s 554(1) (bb) Block Development Officer, Chandrakona was vested with all the powers and duties of the Commissioners. These are the two orders which are being challenged in this Rule obtained on a Writ petition.

6. Though an affidavit-in-opposition was filed on behalf of respondent Nos. 2 to 5 for contesting the above Rule the said affidavit stands rejected by this Court''s order dated September 24, 1973, because inspite of repeated opportunities being given the respondent? failed to file the memorandum of appearance and the authority in favour of the learned Advocate by whom such affidavit-in-opposition was filed. Mr. Guha has appeared at the final hearing on behalf of the respondents and I have heard him amicus curiae as he holds no power.

7. According to the petitioners the impugned order of supersession is not at all bona fide. According to them the Chairman belongs to political party which is rival to the party now in power in the Government. Respondent No. 7 who was found guilty of misappropriation of Municipal Funds and properties and who had not only been removed from office but against whom appropriate action was being taken by the

Commissioners joined hands with the members of the political party now in power and the said respondent No. 7 prevailed upon the State Government to supersede the Commissioners in an attempt to riggle out of the charges and allegations levelled against him. Petitioners claim that the impugned order is not bona fide but is motivated by political reasons. In paragraphs 27 to 31 the petitioners have strongly controverted the bona fides and correctness of the allegations on which the order is based. It is also claimed that the impugned order having been passed without giving the petitioners any opportunity to show cause is violative of principles of natural justice and as such is liable to be set aside.

8. Mr. Dasgupta, appearing in support of this Rule, has raised three points. In the first place, he has contended that no order of supersession u/s 553 of the Act could have been validly made without affording an opportunity to the Commissioners to show cause against such a proposed action. The impugned order having been so made is liable to be set aside. Secondly, he has contended that on the pleadings, if not all, a number of grounds which constitute the basis of the order being non-existent the order is not sustainable in law. Lastly, he was contended on the uncontroverted statements made in the writ petition that the impugned order is not bona fide.

9. So far as the first point raised by Mr. Dasgupta is concerned, it is not in dispute and is also evident on facts established that in the present case the Commissioners were not served with any prior show cause notice nor were they given any opportunity to place their case before the State Government in respect of the serious allegations of in-competency and default for which they have been superseded. On these facts unless it is held that there was no obligation in law for the State Government to give any such opportunity or show cause notice prior to making such an order u/s 553, it must be held that the order so made being violative of the ordinary principles of natural justice is liable to be set aside. The only question which naturally arises for consideration is as to whether section 553 calls for application of the principles of natural justice which would make it obligatory for the State Government to give an opportunity to the Commissioners to show cause against such a proposed action. According to Mr. Dasgupta section 553 provides for penal action on grounds of default and in-competency; it necessarily contemplates an adjudiciation on the question of default and in-competency and such adjudication must be on an appropriate show cause notice to the persons to be affected. Mr. Guha, on the other hand, has contended that section 553 contemplates an administrative action based on an opinion formed by the State Government. According to him unlike section 550, section 553 does not provide for any notice to show cause. Further, when the action taken is administrative there arises no necessity of following the principles of natural justice or giving a show cause notice. Strong reliance is placed by Mr. Guha on two single Bench decisions one of the Allahabad High Court and another an unreported decision of this Court. The Allahabad decision is reported in Iqbal Ahmad Vs. State of U.P. and Others, . while

decision of this Court is in the case of Promode Kumar v. A. Zaman, AIR 1965 NUC 5591.

10. Though the decisions relied on by Mr. Guha support in a way the contention put forward by Mr. Guha, I am unable to accept his contention in its entirety because of subsequent development of the law on the point. I consider it unnecessary to embark on any investigation on the wider issue as to whether powers exercised u/s 553 are administrative or quasi-judicial. Even if it be assumed that powers so exercised are administrative, yet it would call for application of the principles of natural justice. An action taken u/s 553 leads to serious prejudicial consequence. As is evident in the present case by the impugned order not only have the Commissioners lost their office they have further been declared to be incompetent and guilty of serious defaults. The order attaches stigma which the petitioners have to carry for all times. It is now a settled principle that even as (an) administrative action which leads to such consequence requires adherence to the principles of natural justice. Reference may be made to a number of decisions of the Supreme Court delivered later to the decisions relied on by Mr. Guha. Reference may be made to the cases of State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, , A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , and Union of India (UOI) Vs. K.P. Joseph and Others, . The Allahabad High Court in Iqbal Ahmad Vs. State of U.P. and Others, was not considering a question in the same form as it is now before me. There it was held that powers exercised under a parallel provision in section 36 of the U.P. Town Areas Act are administrative and not quasi-judicial. An observation was made in passing that section 36 called for no show cause notice and as such powers invested by such a provision are not quasi-judicial. Similar is the position with the decision of this Court in AIR 1955 NUC 5591. It was primarily held that section 553 casts no duty to act judicially or quasi-judicially and then it was observed, "there being no duty to act judicially or quasi-judicially no duty to give a hearing before passing the order of supersession can be implied." With due respect these observations have lost their importance in view of the principles enunciated by the Supreme Court in the decisions referred to hereinbefore. It is no longer correct to think that the principles of natural justice are restricted in their application only to judicial and quasi-judicial field and that where the duty cast is administrative there can never arise an implied necessity of observing principles of natural justice. To quote Hegde J. "the horizon of natural justice is constantly expanding". It has since decisively been held to cover administrative field as well. In my view, the point is no longer res integra in view of the decision of the Supreme Court in the case of Radeshyam Khare and Another Vs. The State of Madhya Pradesh and Others, . There all the Judges agreed that an order of supersession under a provision like the one now under consideration called for an opportunity to show cause though the provision itself explicitly imposed no such obligation. On facts, however while the majority held that such an opportunity had duly been given, the minority could not agree to such a conclusion. In my opinion Mr. Guha may be right

in pointing out that section 553 contemplates an action to be taken on an opinion to be formed but in view of the consequence that would follow and also in view of the position that the opinion to be formed would be with reference to an objective test, in forming such an opinion in an honest and fair manner it is necessary that the person to be affected should be given an opportunity to show cause.

11. On the point under consideration Mr. Das Gupta has rightly drawn my attention to a decision of the Privy Council in the case of Durayappah v. Fernando (1967) 2 All. E.R. (P.C.) 152. While considering a similar provision in section 277(1) of the Municipal Council''s Ordinance Privy Council held that the rule of natural justice, audi alteram partem, was applicable to a decision on the part of the. Minister to make an order of supersession u/s 277(1) on the ground of incompetence on the part of the Council. The decision so relied on by Mr. Dasgupta fully supports the view taken by me hereinbefore in respect of section 553 of the Act. Reference may also be made to an earlier decision of mine in respect of parallel provision in section 67 of the West Bengal Panchayat Act, 1957 dated December 10, 1971 in C.R. 2664(W) of 1970. Sudhir Chandra Mondal v. The State of West Bengal.

12. On the conclusions as above I must accept the first contention raised by Mr. Dasgupta and hold that as the impugned order of superssion is violative of such a principle of natural justice, it is liable to be set aside. As the application succeeds on a very fundamental objection raised by Mr. Dasgupta it is not necessary to go into and finally decide the other two points raised by Mr. Dasgupta. It must, however, be said that the petitioners'' positive case of malice stand uncontroverted not only because the affidavit-in-opposition stands rejected but also because even in the said affidavit the relevant allegations have not been controverted.

On the conclusion as above this application succeeds.

The Rule is made absolute.

The impugned order of supersession dated April, 28, 1972 u/s 553 of the Bengal Municipal Act along with the consequential order bearing the same date u/s 554(1) of the said Act are set aside.

Let a writ in the nature of Mandamus do issue directing the respondents not to give any effect to these orders.

There will be no order as to costs.