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which are to be detained are also specified in section 14-B(6) as the goods meant for trade and not covered by proper and genuine documents.”

(22) A clearing or forwarding agent and *Dalal* cannot carry on his business without a licence under section 38 of the Act and it is necessary for him to furnish the particulars in respect of the transactions of the goods handled to the Assessing Authority and in default to suffer penalty equivalent to the 20 per cent of the value of the goods in respect of which particulars are not furnished. Keeping in view the details of the provisions contained in section 38 of the Act it is difficult to hold that it is covered by the ratio of *Mool Chand Chuni Lal's case* (supra) and *intra vires* the State Legislature being ancillary or incidental power to levy sales-tax under Entry 54, List II of the VII Schedule.

(23) In view of discussion above, section 38 of the Act is *ultra vires* the State Legislature as it is neither covered by Entry 54, List II of VII Schedule directly nor is it ancillary or incidental thereto. Rules 53 being consequential to section 38 of the Act can also be not sustained.

(24) In the result, the writ petition is allowed and section 38 of the Act and rule 53 of the Rules are struck down as unconstitutional and the respondents are restrained from compelling the petitioners to file returns as prescribed therein. No order as to costs.

Prem Chand Jain, A.C. J.—I agree.

N. K. S.

Before P. C. Jain, A.C.J. & I. S. Tiwana, J.

SOHAN LAL AHUJA,—Petitioner

versus

STATE OF PUNJAB,—Respondent.

Civil Writ Petition No. 1074 of 1984.

June 1, 1984.

Punjab Municipal Act (III of 1911)—Section 20(1)—Member of a municipal committee elected its president—Power of the Government to grant approval under section 20(1)—Scope of—Stated—Earlier removal of the member from the office of president—Whether by itself a ground for not approving his re-election.

Held, that section 20(1) of the Punjab Municipal Act, 1911 mandatorily directs that every Committee shall elect one of its members to be the President and the member so elected, if approved by the State Government, would become the president of the Committee. The power to 'approve' essentially includes the power 'not to approve' the election of a member as the president. This, however, does not mean that it can be exercised arbitrarily. The statutory power so given, not being a matter of assertion of any right, has to be exercised in a reasonable and honest manner keeping in view the public interest. In a nut shell, the power is entrusted to the State Government as the Custodian of the rights of both the inhabitants of the area declared to be a municipality and the elected members of the Committee. The mere fact that the election has to be approved by the State Government does not mean that the latter can disapprove it for any reason or no reason. The Government must form the opinion to approve or not to approve the election in a *bona fide* manner keeping in view the existent and relevant facts and circumstances of a particular case. The State Government is always entitled to take into consideration the extent and gravity of the misconduct besides all other relevant factors to weigh and judge as to whether approval should be granted to the election of such a members as President or Vice President. The penalty of removal of a President from his office may not by itself necessarily and automatically lead to the consequence of non-approval of his re-election as president.

(Para 4).

Writ Petition under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court may be pleased to summon the record of the case and after a perusal of the same may be pleased to issue:

- (a) *a writ in the nature of certiorari quashing the impugned decision of the Punjab Government, Annexure P. 4, by which it has declined to approve and notify the election of the petitioner as President, Municipal Committee, Abohar.*
- (b) *a writ in the nature of Mandamus directing the respondent to approve and notify the election of the petitioner as President of the Municipal Committee, Abohar in the official gazette.*
- (c) *declare the section 20 of the Punjab Municipal Act, to the extent to which it gives uncontrolled, unguided power to the State Government to grant approval to the election of President as ultra vires of the Punjab Municipal Act and Constitution of India.*
- (d) *Any other writ, order or direction that this Hon'ble Court deems fit under the circumstances of the case.*

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(e) *Service of advance notices of motion on the respondents and filing of certified copies of Annexure P. 1 to P. 4 may kindly be ordered to be dispensed with, and the costs of the petition may also be awarded to the petitioner.*

Further praying that during the pendency of this writ petition this Hon'ble Court may be pleased to permit the petitioner to act as President of the Committee, stay the nomination of any person to the office of President by the State Government or any other ad-interim relief that this Hon'ble Court deem fit under the circumstances of the case may be allowed to the petitioner.

Sataya Pal Jain, Advocate, (Mr. Parveen Chander Goyal, Advocate with him), for the Petitioner.

A. S. Sandhu, Additional A.G. (Punjab), for the Respondent.

JUDGMENT

I. S. Tiwana, J.

(1) The short but somewhat significant question raised in this petition under Article 226 of the Constitution of India relates to the scope of the Government's power under section 20(1) of the Punjab Municipal Act, 1911 (for short, the Act) to approve or not to approve the election of a member as President of the Municipal Committee. The following facts which are otherwise not in dispute clearly bring out the contours of the controversy raised in this petition.

(2) The petitioner was elected as a member of the Municipal Committee, Abohar—a Class 1 Committee—in the year 1979. Later on August 7, 1979, he was unanimously elected as President of the Committee. *Vide* notification dated June 10, 1983, he was removed from the office of the President and membership of the Committee with a further disqualification for five years from contesting the election to the same. One of the charges found established against him was that he had leased out a piece of land measuring 40' x 200' for a period of ninety-nine years to the Bharatiya Janta Party to which party he admittedly belonged and this amounted to misuse of power on his part even though the matter had later been placed before the Committee and had been approved by it. The petitioner impugned the above noted notification in Civil Writ Petition No. 2853 of 1983 and the Division Bench while partly allowing the same on December 19, 1983 concluded the matter thus:—

“The result of the discussion is that writ petition succeeds partly to the extent that while part of the impugned order

(Annexure P-5) removing the petitioner from the office of the President is upheld, his removal from the membership of the Municipal Committee is quashed, so also the penalty of disqualification to be a member of the committee for a period of 5 years."

Thereafter on December 24, 1983, in a meeting convened by the Executive Officer of the Municipal Committee to hold fresh election to the office of the President of the Committee, the petitioner was again unanimously elected as President of the said Committee. The result was communicated by the Executive Officer to the Director, Local Government, Punjab, Chandigarh, on December 26, 1983, for purposes of approval by the State Government and publication in the official gazette, to meet the requirements of sections 20(1) and 24 of the Act. Since the Government failed to take immediate action on this communication, the petitioner made a representation to the Secretary Local Government Department, Punjab, on January 5, 1984, to grant approval to his election as President of the Municipal Committee, but the Secretary appears to have remained unconcerned. Sensing that the Government may not approve and notify his election as President of the Committee, he filed Civil Writ No. 590 of 1984 in this Court seeking a writ of mandamus to the respondents to notify his name as President of the Committee. When this petition came before us for motion hearing on February 13, 1984, Mr. Sandhu, Additional Advocate General, Punjab, made the following statement:—

"Mr. Sandhu states at the bar that a final decision with regard to notification of the name of the petitioner as President would be taken by the Government on or before 23rd February, 1984. In case the Government decides not to notify the name, then reasons would be recorded in the order and the same shall be conveyed to the petitioner to enable him to challenge its legality in the Court of law. However, if no decision is taken by the Government by 23rd February, 1984, then the election of the petitioner as President shall be notified forthwith".

We disposed of the petition in terms of the above noted undertaking of the State counsel. On February 22, 1984 the State Government passed the following order (Annexure P. 4) which is now impugned in this petition:—

"The matter regarding approval of Shri Sohan Lal Ahuja as President, Municipal Committee, Abohar has been

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considered in all details and the Government is of the opinion that since Shri Sohan Lal Ahuja was removed from the office of President, Municipal Committee Abohar on account of abuse of powers as per notification No. ADSLG dated 10th June, 1983 and that this removal from this office was upheld by High Court of Punjab and Haryana, the Government declines to approve and notify the election of Shri Sohan Lal Ahuja, Member, Municipal Committee, Abohar as President of the Committee."

(3) Petitioner's stand now is that firstly this order does not satisfy the requirements of the undertaking given by the State counsel on February 13, 1984 inasmuch as it contains no reason whatsoever for the non-approval of the petitioner's name as President of the Municipal Committee, Abohar and in case it does, then the solitary reason given that the petitioner had been removed from the office of the President earlier,—*vide* notification dated June 10, 1983, can in law be no ground for the non-grant of the approval; and secondly, the provisions of section 20(1) which confer arbitrary and unguided powers on the State Government to grant or not to grant approval to the election of a President of a Municipal Committee, are *ultra vires* the Constitution of India. The short and simple defence of the respondent authorities as per their return, besides upholding the vires of section 20(1) of the Act is that the Government is fully empowered to decline to approve the name of the petitioner in the light of his past misconduct which led to his removal from the office of the President of the Municipal Committee. According to these authorities this re-election became necessary only on account of that removal which had also been upheld by this Court.

(4) Having heard the learned counsel for the parties at some length we find that the petition must fail. A bare reading of the impugned order clearly indicates that the election of the petitioner as President of the Committee has not been approved on account of his past misconduct or misuse of his powers as President of the Municipal Committee to which a reference has already been made in the earlier part of this judgment. In the light of this the contention of petitioner's counsel that the impugned order does not contain any reason or does not satisfy the requirements of the undertaking given by the State Government on February 13, 1984, is obviously devoid of any substance. The learned counsel appears to be equally wrong in submitting that the solitary reason for the passing of the impugned order is that the petitioner had earlier been removed from

that office. The actual reason for this non-approval as disclosed in the impugned order itself is the 'abuse of power' and not the factum of removal from that office alone. Mr. Sandhu, learned State counsel has produced before us the relevant record which clearly goes to show that while taking the decision noted above, the State Government was fully aware of and examined the past performance and misconduct of the petitioner as a President of the Municipal Committee and it was after making a detailed reference to the entire case history that the State Government passed the impugned order. By now it is well settled that in matters like this, even though the order in question is in the nature of a quasi judicial order, yet the State Government is not required to disclose anything more than the 'outlines of the process of reasoning' for recording its conclusion and need not burden the order with a detailed and exhaustive discussion. [See *Shri Sohan Lal Verma v. State of Punjab and others*, (1)]. The question that, however, needs to be considered and has been agitated with some amount of vehemence by the petitioner's counsel is as to whether the earlier removal of the petitioner from the office of the President of the Municipal Committee on account of the abuse of power as President constitutes a valid ground or good enough a reason to not to approve his re-election as the President of that Committee. To answer this question, a reference to the phraseology of section 20(1) of the Act is apparently necessary and the same is reproduced as follows:—

"20. Election or appointment of President and Vice President.

- (1) Every Committee shall from time to time elect one of its members to be president and the member so elected shall, if approved by the State Government, become president of the Committee."

Apparently the above noted provision mandatorily directs that every Committee shall elect one of its members to be the President and the member so elected, if approved by the State Government, would become the President of the Committee. It is the undisputed position that the power to 'approve' essentially includes the power 'not to approve' the election of a member as the President. This, however, does not mean that it can be exercised arbitrarily. The statutory power so given, not being a matter of assertion of any right, has to be exercised in a reasonable and honest manner keeping in view the public interest. In a nut shell, the power is entrusted to the State Government as the Custodian of the rights of both the

(1) C.W. 5417 of 1981, decided on 4th June, 1982.

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inhabitants of the area declared to be a municipality and the elected members of the Committee. The mere fact that the election has to be approved by the State Government does not mean that the latter can disapprove it for any reason or no reason. The Government must form the opinion to approve or not to approve the election in a *bona fide* manner keeping in view the existent and relevant facts and circumstances of a particular case. In the light of this content and scope of the Government's power under the above noted provision, it appears difficult to sustain the stand of the petitioner that in the instant case the State Government has disapproved his re-election as President of the Municipal Committee without any good or justifiable cause. Petitioner's counsel may be right to the extent that a non-approval of the election of a member of a Committee as President of that Committee solely on the ground of factum of his earlier removal may not be good enough a ground, as such an approach would virtually render the member as ineligible for re-election as President and that is not envisaged by the statute but as in the instant case the petitioner's election has not been disapproved on that ground alone and has rather not been approved on account of his past misconduct or misbehaviour as a President of the Committee. As already pointed out, the relevant record produced before us by Mr. Sandhu clearly discloses that the State Government has considered all the aspects of the matter before passing the impugned order. The State Government is always entitled to take into consideration the extent and gravity of the misconduct besides all other relevant factors to weigh and judge as to whether approval should be granted to the election of such a member as President or Vice President. The penalty of removal of a President from his office may not by itself necessarily and automatically lead to the consequence of non-approval of his re-election as President.

(5) So far as the second contention of the learned counsel for the petitioner is concerned, he even during the course of hearing conceded that in case we take the view which we have recorded above about the content and scope of the Government's power under section 20(1) of the Act, the same does not arise at all.

(6) For the reasons recorded above we find no infirmity in the impugned order, Annexure P. 4. As a necessary consequence of this conclusion of ours the petition fails and is dismissed but with no orders as to costs.

N.K.S.