

Before I. S. Tiwana, J.

JAGDISH RAI AND OTHERS,—Petitioners.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 347 of 1982.

August 2, 1982.

Punjab Municipal Act (III of 1911)—Section 238—Municipal Committee found to have abused its powers and, therefore, held incompetent to perform its duties—Word ‘abuses’ in section 238(1)—Whether connotes persistent continuity—Incompetence to perform duties—Whether could be inferred from abuse of power—Abuse of powers’ and ‘incompetent to perform the duties’—Whether independent grounds mutually exclusive of each other for the suspension of a Municipal Committee.

Held, that it is clear from section 238(1) of the Punjab Municipal Act, 1911 that a Municipal Committee can be suspended for a period not exceeding one year, if in the opinion of the State Government (i) the Committee is not competent to perform; or (ii) persistently makes default in the performance of (a) duties imposed on it by or under this Act or any other law (b) or exceeds or abuses its powers. The use of the expression ‘abuses’ clearly indicates that there must be some amount of persistent continuity or a habit of abusing. Further, ‘abuse’ essentially means misuse of one’s talent or position. It also has an element of lack of *bona fides* and causing harm to others or undeservedly benefitting another. Where the charge against the Committee or its members relates to only one activity, it cannot be held that they were guilty of any persistent abuse of powers.

(Paras 6 and 7).

Held, that a bare reading of section 238 of the Act indicates that the two grounds ‘abuse of powers’ and ‘incompetent to perform the duties’ are two alternatives and independent grounds—mutually exclusive of each other—of which a Municipal Committee can be held guilty. It is not essential that a Committee which abuses its powers must necessarily be incompetent also. Conversely also, a Municipal Committee which is wholly incompetent to perform its duties may not abuse its powers at all and may still be liable to action under this section. Thus, where the charge levelled against a Municipal Committee is that it abused its powers, it cannot be inferred that it is incompetent to perform the duties imposed on it without anything more.

(Para 8).

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Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court may be pleaded to:—

- (i) *Send for the records of the case and after perusal of same.*
- (ii) *Issue a writ of certiorari quashing the impugned notice Annexure P/3 and the impugned Order Annexure P/5;*
- (iii) *Stay the operation of the impugned order Annexure P/5;*
- (iv) *Dispense with the production of certified copies of annexures and issuance of notices of Motion and allow costs.*

Ashok Bhan Advocate, for the Petitioner.

K. S. Cheema, Advocate, for respondents No. 1, 2 and 5.

JUDGMENT

I. S. Tiwana, J. (Oral).

1. The petitioners who were elected and co-opted as members of the Municipal Committee, Lehra Gaga, impugn the order of the State Government published in the Punjab Government Gazette on January 14, 1982 suspending the said Municipal Committee for a period of one year with effect from that date in the purported exercise of power under section 238 of the Punjab Municipal Act, 1911 (for short, the Act).

2. The case of the petitioners is that Lal Singh husband of respondent No. 3 Smt. Rajinder Kaur Bhattal (Minister of State in the present Government contested election against petitioner No. 1 for membership of the Municipal Committee, but lost and it was since that day that he and his wife respondent No. 3 did not reconcile with the defeat and threatened the duly elected members of the Committee to throw them out of office by suspending the Committee. According to the petitioners, they had repeatedly been proclaiming so in the area. On September 12, 1980 the Municipal Committee through a unanimous resolution authorised its President, petitioner No. 1, to allot certain surplus land of the Municipal Committee for the construction of shops and stalls. As a result of that,

an auction was held on December 23, 1980 and 26 plots were put to auction for purposes of lease on monthly basis. On receipt of certain complaint by the Chief Minister with regard to the abuse of power by the Municipal Commissioners in the auctioning of these plots the former ordered an enquiry through an Officer of the Local Government, Punjab.

3. The case of the petitioners further is that prior to the holding of this enquiry in pursuance of this order of the Chief Minister, two similar but independent enquiries had already been held by the Deputy Commissioner, Sangrur and Deputy Director, Local Bodies, Patiala. According to the petitioners, the result of the abovenoted three enquiries had gone in their favour as none of these Officers had found any lack of *bona fides* on their part but on account of the *mala fides* on the part of respondents and more particularly respondent No. 3 yet another enquiry was ordered, which was conducted by one Mr. Syal, Deputy Director (hqs) Local Government, Punjab. As a result of this enquiry, the Deputy Director concluded that the petitioners had been guilty of misusing their power. On the basis of this enquiry report, the matter was considered by the Government and agreeing with the proposal made by the Director on examination of the material before him passed the impugned order. The challenge on behalf of the petitioners to this order is as follows:—

- (i) the order stands vitiated as it contains no reasons for the passing of the same ;
- (ii) the Government has nowhere found that the petitioners were guilty of persistent abuse of power;
- (iii) in the given facts and circumstances of the case, even if the petitioners can legitimately be held guilty of non-compliance of certain instructions laid down by the Government about the leasing out of plots through auction, the petitioners cannot be held guilty of abuse of power as none of the enquiring authorities had found any lack of *bona fide* on their part; and
- (iv) the whole action is *mala fide* as there were no reasons with the Government to not to accept the findings recorded in the earlier three enquiries.

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(4) After hearing learned counsel for the parties and a perusal of the relevant Government files which I found necessary in the light of the submissions made by the learned counsel for the petitioners, I find the petitioners deserve to succeed on grounds No. (ii) and (iii) stated above. The other two grounds do not stand substantiated.

(5) A bare reading of the impugned order and more particularly the schedule attached to it discloses all the reasons on which conclusion of the State Government is based. Regarding contention No. (iv) it has not been shown as to how respondent No. 3 Smt. Rajinder Kaur Bhattal had anything to do with the passing of the impugned order. But for the vague allegation that she and her husband have been proclaiming in the area that they would not allow the petitioners and more particularly petitioner No. 1 to function as Municipal Commissioners nothing else has been brought on record.

(6) To appreciate the argument of the learned counsel for the petitioners concerning the other two points stated at No. (ii) and (iii) it is necessary to analyse the relevant part of section 238 of the Act under which provision the impugned action has been taken. Sub-section (i) of section 238 reads as follows:—

“(1) If, in the opinion of the State Government a committee is not competent to perform, or persistently makes default in the performance of, the duties imposed on it by or under this Act or any other law or exceeds or abuse its powers, the State Government may, by an order published, together with the statement of reasons thereof, in the official Gazette, declare the committee to be incompetent or in default or to have exceeded or abused its powers, as the case may be, and suspend it for such period, not exceeding one year, as may be specified in the order.”

It is clear from the provision quoted above that a Municipal Committee can be suspended for a period not exceeding one year, if in the opinion of the State Government:—

(i) the Committee is not competent to perform; or

- (ii) persistently makes default in the performance of (a) duties imposed on it by or under this Act or any other law (b) or exceeds or abuses its powers.

Undisputably, in the present case, the charge against the petitioners relates to only one activity i.e., leasing out of plots through auction on December, 23, 1980. The use of the expression "abuses" clearly indicates that there must be some amount of persistent continuity or a habit of abusing. Further "abuse" essentially means misuse of one's talent or position. It also has an element of lack of *bona fides* and causing harm to others or undeservedly benefiting another.

(7) While interpreting a somewhat similar provision of the Madhya Pradesh Municipality Act (S. 328) a Division Bench of the said Court in *Dhamtari Municipality v. State* (1), assigned the same meaning to the above-noted phrase. It deserves to be highlighted that none of the Enquiry Officers has found that action of the petitioners in auctioning these plots in any manner lacked in *bona fides*. All that has been found by Shri K. K. Syal, in the last enquiry is that the petitioners failed to comply with certain instructions of the State Government with regard to the leasing out of the plots through auction. One of such failures was that no timely information was given to the Deputy Director, Patiala or the Deputy Commissioner, Sangrur in whose presence the auction should have been held. It is the conceded position that the petitioners did inform the Deputy Director, Local Government, Patiala,—*vide* their letter, dated December 16, 1980 about the date of auction i.e., December 23, 1980 but it is said that this did not afford enough time to the Deputy Director to make himself present at the time of auction. Another irregularity which has been found is that the bid sheets prepared by Krishan Chand, Clerk of the Municipal Committee though had been signed by all the bidders, who participated as well as by seven of the Municipal Commissioners present at the spot, but some of the bid sheets did not bear the signatures of all the Municipal Commissioners. From the fact that the Municipal Commissioners while signing these bid sheets had maintained the same order of signing one after the other it has been deduced that probably the bid sheets had been prepared by one at the same time or subsequent to the auction. What happened to the earlier three reports or how those

(1) A.I.R. 1972 M.P 142.

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reports were dealt with or disposed of has not been brought to my notice. In fact, the learned counsel for the State pointed out that the relevant record in that regard was not available with him. Thus, I am satisfied that the State Government neither had enough material nor it actually held that the petitioners were guilty of any persistent abuse of their powers.

(8) Further, I find that even independently of the above-noted contentions of the learned counsel, the impugned notification is unsustainable for another reason. The material part of the order reads thus:

“And whereas after considering the reply received from the Municipal Committee, Lehragaga, the State Government is of the opinion that the Municipal Committee, Lehragaga, abused its powers and, therefore, is not competent to perform the duties imposed on it under the Punjab Municipal Act, 1911, and the rules made thereunder.”

A bare reading of section 238 of the Act which has been reproduced above indicates that these two grounds “abuse of powers” and “incompetent to perform the duties” are two alternative and independent grounds—mutually exclusive of such other—of which a Municipal Committee can be held guilty. It is not essential that a Committee which abuses its powers must necessarily be incompetent also. Conversely also, a Municipal Committee which is wholly incompetent to perform its duties may not abuse its powers at all and may still be liable to action under this section. In the impugned order finding recorded is that the Municipal Committee “abused its powers and therefore, is not competent to perform the duties imposed on it”. Thus if the Committee is not guilty of misuse of its powers—as already held, it is not—then it cannot be held incompetent to perform its duties. Apparently, there has been no applicability of mind at the time of passing the impugned order as the Government was not clear as to under which particular charge the petitioner are to be held guilty.

(9) For the reasons recorded above, this petition succeeds and the notification Annexure ‘P.5’ is quashed. No costs.

N. K. S.