# R.S. Saini vs State Of Punjab & Ors on 9 September, 1999

## Equivalent citations: AIR 1999 SUPREME COURT 3579, 1999 (8) SCC 90, 1999 AIR SCW 3587, 1999 (5) SCALE 427, 1999 (8) ADSC 20, 2000 (1) UPLBEC 173, 1999 (9) SRJ 344, (1999) 5 SCALE 427.2, 1999 ADSC 8 20, (1999) 6 JT 507 (SC), 1999 (6) JT 507, (1999) 4 RECCIVR 253, (1999) 83 FACLR 377, (1999) 2 LABLJ 1415, (2000) 1 LAB LN 29, (2000) 1 LANDLR 193, (2000) 2 SCJ 327, (2000) 1 UPLBEC 173, (1999) 7 SUPREME 612, 1999 SCC (L&S) 1424

## Author: N.Santosh Hegde

## Bench: N.Santosh Hegde

PETITIONER:
R.S. SAINI

Vs.

RESPONDENT:
STATE OF PUNJAB & ORS.

DATE OF JUDGMENT: 09/09/1999

BENCH:
R.C.Lohoti, N.Santosh Hegde

JUDGMENT:

SANTOSH HEGDE, J.

Leave granted.

Heard learned counsel.

This appeal is preferred against the judgment and order dated 4th August, 1998 passed by the High Court of Punjab & Haryana at Chandigarh in C.W.P. No.9852/98. In the said writ petition, the appellant herein prayed for quashing of an order dated 26.6.1998 whereby he was removed from the office of the President, Municipal Council, Nangal. He also prayed for consequential reliefs like restraining the respondents from issuing notifications regarding electing respondent No.3 as the President of the said Municipal Council. The said writ petition having failed, this appeal has been preferred.

It is the contention of the appellant both in the writ petition as well as in this appeal that he was elected as a member of the Municipal Council, Nangal on 20.11.1994 and under Section 57 of the Punjab Municipality Act, 1911 (for short `the Act') the said Council was managing as many as 3 educational institutions; one of which was Shivalik Model School and sequel to certain political differences that arose between him and respondent No.4, the appellant was served with two show cause notices out of which the first notice contained 11 charges and the second notice listed three charges; thus making 14 charges in all against him in regard to various acts of omission and commission which the appellant is alleged to have committed during his tenure as President of the Municipal Council. The appellant has alleged that these show cause notices were issued due to political ven detta at the instance of respondent No.4 who wanted to promote the political career of respondent No.3. Though the appellant had filed an elaborate written reply, showing cause against the charges, the appellant contends that he was not afforded a proper opportunity of defending himself and the enquiring authority did not apply its mind to the reply submitted by him and other relevant material on record that was available, and in violation of the principles of natural justice, coupled with the mala fide intentions of respondent No.4, the impugned order of his removal came to be passed.

It is to be noted that out of the 14 charges that were levelled against the appellant, the authority has found only 5 charges proved against him. They are charge Nos.3, 5, 6 and 9 enumerated in the first show cause notice and charge No.2 enumerated in the second show cause notice. For the sake of convenience, the same are reproduced hereunder :-

> "CHARGE NO.3 :-
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> On 16.6.1997, the meeting of the Municipal Council which was proceeding peacefully and the resolution No.23 was being discussed then you have without any reason postponed the meeting and snatched the proceeding book from Shri Subash Chand Steno, Municipal Council, Nangal who was writing the proceeding of meeting and went out of the meeting hall. By doing so you have misused your position.
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> x x x CHARGE NO.5 :-
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> You have without giving information to Employment department and without taking any legal action appointed the teachers on 6 months basis at your own level which was against the Rules/Instructions.
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> CHARGE NO.6 :-
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> For filling up 21 vacant posts of teachers in Shivalik Model School neither any resolution was passed by the Committee nor approval for filling up these vacant posts was got from the Government. The approval for these appointments was made by the Municipal Council vide resolution No.43.5 dated 15.4.1997 but the decision of Managing Committee has not been considered in the meeting of the Municipal Committee has not been considered in the meeting of the Municipal Council. (sic)

> The Managing Committee of Shivalik Model School had on 13.9.1996 decided to make Deputy Director (H.Q) to be one of the members but at the time of filling up these vacancies neither the Deputy Director (H.Q) was associated nor any intimation for associating him was issued.
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> x x x CHARGE NO.9 :-
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> At the time of making appointment of teachers in Shivalik Model School, you have appointed one of your relation Kuljeet Kaur daughter of Swaran Singh as Science teacher. By doing so, you have violated section 240 of the Punjab Municipal Act, 1911 as per which before making any appointment of some relation, prior approval is necessary to be taken which has not been done by you. You are guilty of giving a direct benefit to your relative from the Municipal Council.
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> x x x
>
> 2. Canal Based Water Supply Scheme which is being installed in the slum area of Municipal Council was to be got completed but you have despite persistent demands by the Punjab Water Supply and Sewerage Board has not deposited the funds with the Sewerage Board due to which the residents are facing major problems of drinking water. By doing so you have misused your position."

Before the High Court, the appellant urged the following 3 questions for its consideration :

> "(i) Has the competent authority failed to consider the reply submitted by the petitioner to the two show cause notices ?
>
> (ii) Is the order violative of the principles of natural justice ? (iii) Is the order vitiated by the malafides of respondent No.4 ?"

After considering the arguments addressed on behalf of the appellant in regard to the first contention raised before the High Court, the High Court noticed that the authority which enquired into the charges has taken into consideration the entire material that was placed before the said authority and had also recorded the evidence and it is only after such thorough consideration of the material placed before the said authority and the pleas raised before it, the enquiring authority recorded its findings. The High Court with reference to the first charge agreed with the enquiring authority that there was nothing on record to indicate that the situation on the date of the relevant meeting did call for the exercise of power vested in the Chairman under bye-law 15 even remotely. Accordingly, it rejected the challenge of the appellant with reference to the finding on Charge No.1 of which the appellant was found guilty.

With regard to the second contention, viz., violation of principles of natural justice, the High Court noted that the appellant had been granted a personal hearing apart from giving an opportunity of filing written submissions. From the material on record, the High Court also came to the conclusion

that the appellant had been heard at length personally and through his counsel. Hence, this complaint of the appellant that there was failure of principles of natural justice, was also negatived by the High Court.

With reference to the ground of attack based on mala fides, the High Court noticed the fact that respondent No.4 had filed an affidavit specifically denying the same. The High Court preferred to accept the version of the fourth respondent as against the ground of challenge in the writ petition and held that it is not possible to come to the conclusion that the impugned order was in any manner influenced by the alleged malice entertained by respondent No.4 against the appellant. Before us, similar points have been urged as was done before the High Court. It was contended on behalf of the appellant that the finding of the enquiry officer was based on no material and suffered from the vice of non-application of mind. In the ordinary course, the facts of this appeal would not have required an elaborate consideration. However, it is a case in which an elected office bearer is being removed from office other than by way of a process of election and the contentions of the appellant being also based on violation of principles of natural justice and acts of malice, in all fairness to the appellant we consider it appropriate to examine the contentions of the appellant at some length.

Looking into the case of the appellant charge by charge, we notice that Charge No.3, as extracted above, shows that the appellant on 16.6.1997 without any cause postponed the meeting and snatched the proceeding book from the stenographer of the Municipal Council and went out of the meeting hall, thereby frustrating the proceedings of the Municipal Council. This charge is made against the appellant in the background of the fact that he did so deliberately to prevent a decision being taken contrary to his interest in the subject. While dealing with this charge, the enquiring authority after referring to the reply submitted by the appellant and based on the material available on record, came to the conclusion that the appellant on finding that the majority of the members were not on his side, abruptly adjourned the meeting and also forcibly took away the proceeding book. He also came to the conclusion that this conduct of the appellant was, therefore, unbecoming of the office that he was holding and the same was, to use the language of the authority, `irregular, illegal and arbitrary'. The enquiry officer also came to the conclusion that the appellant on finding himself in minority and in an uncomfortable situation, exceeded his power of adjourning the meeting which was otherwise peaceful. He also took serious note of the fact of the irregularity committed by the appellant in taking away the proceeding book.

The next charge in regard to which the appellant has been found guilty pertains to his appointing teachers irregularly on 6 months' basis, without giving information to the employment department, against the Rules and instructions applicable to such appointments. With reference to this charge, the enquiring authority took note of the fact that the appellant had denied the same and noticed the stand taken by the appellant that the same was done by the Municipal Council on a temporary basis and the said action was approved by the Managing Committee of the Shivalik Model School. However, the enquiring authority after going through the record of the Municipal Council came to the conclusion that these appointments of teachers were made without the approval of the Municipal Council and the same was done knowing very well that the Managing Committee of the School had no funds of its own and also the appointments in question were made without following

the procedure laid down. It also noticed the fact that the vacancies were never notified to the Employment Exchange nor were they advertised.

The third charge framed against the appellant pertained to filling up the posts of 21 teacher in Shivalik Model School without any resolution nor approval from the Managing Committee and the Government. The authority noticed the defence of the appellant that the Municipal Council vide its Resolution No.43.5 dated 15.4.1997 did grant approval to these appointments. But the decision of the Managing Committee dated 13.9.1996 resolving to make Deputy Director (HQ) to be one of the members of the appointing Committee, was not complied with and these appointments were made without inducting the Deputy Director (HQ) as a member of the Selection Committee as required under the Rules, nor was any intimation sent to him.

The next charge held proved against the appellant pertained to the allegation of appointment of one Smt. Kuljeet Kaur as a Science teacher contrary to the statutory provision of Section 240 of the Act. In regard to this charge, while noticing the defence of the appellant that Smt. Kuljeet Kaur was not related to him, held that from the Selection Committee's records and scrutiny of the application of Smt. Kuljeet Kaur and from Police verification, she was in fact related to the appellant (though not a blood relation). It also noticed the fact that in the invitation card of the marriage of this lady, the name of the appellant had appeared as one of the persons inviting, therefore, the enquiring authority held that as required under Section 241 of the Act, it was obligatory on the part of the appellant to have refrained from participating in selection of the said Mrs. Kaur, and having not refrained from such selection process, the appellant was guilty of this charge also.

The last of the charges with regard to which the appellant has been found guilty pertained to the fact that he has been interfering in the issuance of tenders for the works already sanctioned/approved and such interference was not warranted under the Act and the Rules and out of 279 sanctioned work, tenders in respect of 36 works could not be invited due to his unauthorised interference. With regard to this charge, the enquiring authority came to the conclusion that this charge pertained to the default on the part of the appellant in not depositing the necessary funds with the Sewerage Board for the purpose of installation of Canal Based Water Supply Scheme consequent to which the local residents suffered the major problem of lack of potable water. Discussing the allegations in regard to this charge, the enquiring authority took note of the defence of the appellant that the default was committed not by him but by the Executive Officer and that he had not either stopped or restrained his office from releasing the said funds. From the material on record, the enquiring authority held that the appellant had failed to clear himself of this charge and from the representation of the Deputy Director, it was clear that the lapse was attributable to non-releasing of the funds by the appellant and there was reluctance on the part of the appellant in getting the Scheme executed through the Punjab Water Supply and Sewage Board which, according to the enquiring officer, was for obvious reasons. The enquiring authority also came to the conclusion that because of this deliberate default, the essential supply of water to the poorer sections of the town suffered. Hence, the appellant was found guilty of this charge.

Before adverting to the first contention of the appellant regarding want of material to establish the charge, and of non- application of mind, we will have to bear in mind the rule that the court while

exercising writ jurisdiction will not reverse a finding of the enquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the enquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The enquiring authority is the sole Judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings.

A narration of the charges and the reasons of the enquiring authority for accepting the charges, as seen from the records, shows that the enquiring authority has based its conclusions on materials available on record after considering the defence put forth by the appellant and these decisions, in our opinion, have been taken in a reasonable manner and objectively. The conclusion arrived at by the enquiring authority cannot be termed as either being perverse or not based on any material nor is it a case where there has been any non-application of mind on the part of the enquiring authority. Likewise, the High Court has looked into the material based on which the enquiry officer has come to the conclusion, within the limited scope available to it under Article 226 of the Constitution and we do not find any fault with the findings of the High Court in this regard.

The other two complaints made before us that there has been flagrant violation of principles of natural justice and the impugned order in question was the end-product of malice entertained by respondent No.4 against the appellant were also, in our opinion, rightly rejected by the High Court. It is found from record that the two detailed show cause notices enumerating the various charges giving necessary particulars were issued to the appellant and the appellant had filed a detailed written reply with reference to each one of the charges. The record also bears out that the appellant has been heard through his counsel and the complaint made that he was not given sufficient adjournments for further hearing, in our opinion, would not constitute a breach of the principles of natural justice. As has been noticed by the High Court, the allegation of malafides having been answered by respondent No.4 by way of an affidavit denying the same and the High Court having chosen to accept the affidavit of respondent No.4, and rightly so in our opinion, we do not find any material to differ from the said finding.

We have noted earlier that the scope of judicial review in matters of this nature being restricted, the High Court had to consider the challenge to the impugned order with a limited degree of scrutiny that was called for. We too have considered the complaint within that limited scope in order to find out the correctness of the allegation that the impugned order of the disciplinary authority suffered from the vice of perversity, non-application of mind and tainted by malice and having come to the conclusion that the report of the enquiring authority cannot be faulted with on any of the grounds stated above, we are unable to agree with the appellant. For the reasons stated above, this appeal fails and is hereby dismissed. No costs.