

Lala Ram Niwas vs The State Of Uttar Pradesh, Lucknow And ... on 22 September, 1955

Equivalent citations: AIR1956ALL137, AIR 1956 ALLAHABAD 137

JUDGMENT

Agarwala, J.

1. This is a special appeal against the judgment of a learned single Judge dismissing a writ petition.
2. The appellant was elected as the President of the Kashipur Municipal Board in the elections held in October, 1953. He continued to act as such till he was suspended from that office by an order of the Government served on him, on 1-10-1954. On 21-9-1954, two orders appear to have been passed by the Government, one was G. O. No. 289F(i)/XI-A-616/1954.

This G. O. was from Shri H. L. Bhargava, Under Secretary to Government, Uttar Pradesh, to the District Magistrate, Naini Tal. It required the District Magistrate to call upon the appellant to show cause, within two weeks of the receipt of the order, why he should not be removed from the office of the President of the board under Section 48(2) U. P. Municipalities Act on account of the charges-set forth in an enclosed list. The enclosed list contained 11 charges.

The explanation when received was to be forwarded to Government along with the District Magistrate's comments and definite recommendations^ and if no explanation was received by the due date the fact was to be reported to Government. The other G. O. of the same date was No. 289F. (ii)/XI-A-616/54. This was also from Sri H. L. Bhargava, Under Secretary to Government, Uttar Pradesh to the District Magistrate of Naini Tal. It ran as follows :

"In continuation of G. O. No. 289F(i)/XI-A-616/54, dated 21-9-1954, I am directed to say that in exercise of the powers conferred by Sub-section (3) of Section 48, U. P. Municipalities Act, 1916, as amended from time to time, the Governor has been, pleased to order immediate suspension of Sri Ram Niwas, from the Presidentship of Municipal Board, Kashipur, pending enquiry into the charges against him."

Clauses (2) and (3) of Section 48, as amended, under which the two orders were issued run as follows :

"48 (2). The State Government may, at any time, if it is satisfied:

(a) that there has been a failure on the part of the President in performing his duties, give him a warning or remove him from office as the State Government think fit, or

(b) that the President has

(vi) been guilty of gross misconduct in the discharge of his duties, remove him from office.

Provided that before giving a warning or removing him from the office under this sub-section the State Government shall give him an opportunity of explaining the conduct on account of which it is proposed to take action against him, and shall in the event of taking such action place on record the reasons therefor and the decision of the State Government thereon shall not be questioned in any Court.

(3) The State Government may place under suspension a President against whom action is proposed under Sub-clause (vi) of Clause (b) of Sub-section (2) until the proceedings are over and where a President has been so suspended he shall not for so long as; the order of suspension continues be entitled "(a) to exercise the powers or perform the duties of a President imposed upon him by or under this Act or any other enactment for the time being in force; and

(b) to take part in any proceedings of the board."

3. It is conceded that the charges framed against the appellant fell under Sub-clause (vi) of Section 48 (2) (b). After the appellant received these orders on 1-10-1954, he applied to this Court under Article 226 of the Constitution on 3-11-1954, for an order or direction in the nature of a writ of certiorari to quash the order of suspension dated 21-9-1954, and for the issue of a writ in the nature of mandamus requiring the opposite parties to withdraw the other order of the same Sate. The application was dismissed by a learned Single Judge of this Court.

4. Two contentions have been raised before us on behalf of the appellant The first is that the Government had no jurisdiction to take action under Sub-section (3) of Section 48 by suspending the appellant until enquiry had been held in accordance with the proviso to Sub-section (2) and, as a result of the enquiry, it had been decided to remove him; and, secondly, that in any case the order of suspension could not be made without giving an opportunity to the appellant to show cause why the order of suspension should not be made.

5. In support of the first ground, it is urged that the words "against whom action is proposed" appearing in Sub-section (3) of this section have reference to the actual action proposed to be taken or punishment proposed to be inflicted as provided tinder Sub-section (2), that is to say the order of removal, and that they have no reference to the mere framing of charges against the appellant, or the holding of an enquiry in respect of those charges. We are unable to accept this contention.

The proviso to Sub-section (2) makes it incumbent upon the State Government, before action in fact is taken under Sub-section (2), that is, before the President is given a warning, or is removed from

office, to give him an opportunity of explaining the conduct on account of which it is proposed to take action against him. Two stages are envisaged here.

First, there is a proposal to take action against the President. When the Government is satisfied from the report received by it that there has been a failure on the part of the President in performing his duties, or he has been guilty of other acts mentioned in the various clauses of Clause (b) of Sub-section (2), the Government may propose to take action against him, that is to say, frame charges against him and give him an opportunity of explaining his conduct. The second stage is reached when after considering the explanation of the President and other materials placed before it the Government decides to either give him a warning or to remove him. An opportunity to show cause against the nature of the punishment as is provided for in Article 311 of the Constitution is not contemplated here.

The words in Article 311 are "opportunity of showing cause against the action proposed to be taken". These have been interpreted to mean 'against the nature of punishment proposed to be inflicted after the enquiry 'into the conduct of the Government servant has been held and he has been found guilty'. But in the proviso to Sub-section (2), the language used is quite different "the State Government shall give him an opportunity of explaining his conduct on account of which it is proposed to take action etc. The opportunity here contemplated is to explain the conduct and not against the nature of punishment to be inflicted.

6. Sub-section (3) of Section 48 authorises the State Government to place under suspension a President against whom action is proposed to be taken under Sub-clause (vi) of Clause (b) of Sub-section (2) until the proceedings are over. Sub-section (3), therefore, applies to the first stage, that is to say, as soon as action is proposed to be taken. It therefore follows that the Government's power of suspension may be exercised as soon as a charge-sheet is served upon the President and he is called upon to explain his conduct.

It would be very anomalous if this were not so, A President has under his control a vast municipal organisation. He has got large powers to work for evil or for good in the exercise of his functions as a President. When serious charges of misconduct are levied against him and the Government has prima facie grounds to proceed against him the Government ought to have the power to suspend the President so that he may not be able to continue the mischief, which he is alleged to have been doing, any further.

If the Government be powerless to order his suspension during the course of the enquiry he might cause irreparable loss to the public. It is for this reason that Sub-section (3) of Section 48 of the Act authorises the Government to suspend the President as soon as an enquiry is proposed against him and he is called upon to explain his conduct.

7. The second! contention of learned counsel is that before the president is suspended under Sub-section (3) he should be given an opportunity to show cause why he should not be suspended. He bases his contention on the ground of natural justice.

According to him, whenever a person's rights are proposed to be taken away or affected by an order, natural justice requires that he should have an opportunity of showing cause against the proposed action. .

Learned counsel contends that as the action or suspension itself takes away from the President valuable rights vested in him by virtue of that office, natural justice requires that he should be given an opportunity to explain his conduct before he is suspended from his office. We are unable to accept this contention also.

8. This suspension of a President from his office is not a case where the property or other rights under the common law of a private citizen are taken away or affected by the order. The rights here affected are not common law rights but those created by the Statute, and, as such, they are governed by the provisions of the Statute. Where the Statute does not grant the right of showing cause, no such principle of natural justice as is contended for on behalf of the appellant can be invoked. Sub-section (3) of Section 48 is clear. It does not provide for any opportunity being given to him.

We do not think that any principle of natural justice can be relied upon to entitle the President to have an opportunity of being heard before the order of suspension is passed against him.

9. No other point was urged.

10. The result therefore is that the appeal fails and is dismissed. The respondents are entitled to their costs.

11. The stay order is discharged.