

President, Municipal Board ... vs District Magistrate, Shahjahanpur on 17 October, 1955

Equivalent citations: AIR1956ALL369, AIR 1956 ALLAHABAD 369

ORDER

Mehrotra, J.

1. Sri Bishanchandra Seth, the applicant in the two petitions, was elected President of the Municipal Board, Shahjahanpur at the general election held in November, 1953. The candidate, who was defeated by the petitioner, was the Chairman of the Board for a long time before the election of the applicant. He has in the present Board organised the opposition party and a number of efforts were made by the opposition to oust the petitioner from the office of the Presidentship.

A notice for motion of no-confidence was given to the District Magistrate, against the applicant. The motion was, however, subsequently lost. After the proceedings for no-confidence were over, it is alleged by the petitioner that in the ordinary course he tabled the revised budget of the Board for the year 1954-55 as also the original budget; for the year 1955-56 on 21-3-1955, for the examination and inspection of the members of the Board..

A meeting of the Board for the purpose of passing the budget was fixed for 29-3-1955 at 3.00 p.m. Some of the members of the opposition group approached the District Magistrate, Shahjahanpur and made certain complaints against the petitioner. The petitioner was informed on 28-3-1955 that the District Magistrate, Shahjahanpur on the complaint made by some of the members, had directed the City Magistrate, Shahjahanpur to attend and supervise the meeting of the Board, which was going to be held on 29-3-1955.

Thereupon the applicant wrote a letter to the District Magistrate, Shahjahanpur. A copy of the letter is annexed to the petition as Annexure A. In the letter, the petitioner mentioned that he had come to know from reliable source that the District Magistrate had directed the City Magistrate to watch the proceedings of the meeting to be held on 29-3-1955 which was against the principles of democracy. 'The letter further- said that in case the district Magistrate was not prepared to withdraw the directions which he had issued to the City Magistrate, the petitioner was going to adjourn, the meeting. No reply was sent to this letter by 29-3-1955. The meeting was adjourned and the District Magistrate sent a reply on 30-3-1955.

It is said that he had not deputed the City Magistrate to get the meeting of the Board conducted under his supervision but the City Magistrate was to remain present in the meeting and was simply to watch the proceedings from the public gallery and not to interfere with the proceedings. On 29-3-1955, when the meeting was held, the City Magistrate, it is alleged by the applicant, came to the

meeting hall, sat down by the side of the applicant and the applicant adjourned the meeting for the next date as he thought that that was an encroachment upon his rights.

On 30-3-1955, another letter was sent by the applicant to the District Magistrate in which he again protested against the presence of the City Magistrate in the meeting of the Board and again inquired from the District Magistrate if he was still going to send the City Magistrate to supervise the proceedings of the meeting which was to be held on the 30th March.

No reply was received by the applicant to the aforesaid letter and the adjourned meeting of the Board was held on 30-3-1955 at 3.00 p.m. When, the meeting started, the City Magistrate came in the meeting hall and sat near the applicant chair. Thereupon, the applicant, in order to avoid the difficulties in the running of the administration of the Board as the budget had not yet been considered and passed, directed the Executive Officer of the Board to call the adjourned meeting of the Board of the 30th March on 7-4-1955 at 5.30 p.m. The meeting was directed to be held in camera.

When the meeting of 7-4-1955 started at 5.30-p.m. a telephonic call from the District Magistrate was received by the petitioner directing the petitioner not to hold the meeting in camera. An order dated 7-4-1955 was also received by the appellant to the effect that the applicant was prohibited from holding the meeting in camera. The order is set out in Annexure D to the present Petition. It is necessary to refer to some portions of the order. The preamble of the order reads as follows:

"Whereas it has been reported to me from time to time that you have been misrepresenting the proceedings of the Board's meetings and whereas in consequence of the representation the City Magistrate had to be deputed, to watch 'the proceedings from the public gallery on 29 and 30-3-55 and whereas you, thereupon, adjourned the meetings on those dates (29 and 30-3-1955) and whereas now I am informed that you have fixed the meeting to hold in camera this afternoon and whereas the representation persists and It still continues to be represented to me that you will again misreport the proceedings of the Board, whereas I am audibly informed through those who may be aggrieved by misrepresenting and whereas I consider that such a situation is fraught with severe consequences to the public peace and will cause riot or affray."

The order further directs that in the exercise Of the powers conferred on the District Magistrate under Section 34(1) (b), U. P. Municipalities Act, 1916, he prohibited the petitioner to hold the same in public in the Board's office. Due to the, order of the District Magistrate prohibiting him from holding the meeting in camera, the petitioner could not hold the meeting on the 7th April and the budget consequently could not be passed.

The petitioner, in his affidavit, has stated that the allegations against him that he was not recording the proceedings correctly or was misrepresenting the facts were incorrect. On these facts the petitioner filed a petition under Article 226 of the Constitution on 4-5-1955, praying that the order dated 7-4-1955 be quashed by issuing a writ of certiorari or a writ of mandamus be issued calling

upon the opposite party to withdraw the Order dated 7-4-1955 and directing him to refrain from illegal and unauthorised interference with the applicant's right to regulate the holding of the" meetings in any manner the applicant chooses to do subject to the limitations prescribed by the U. P. Municipalities Act.

Notice was issued by this Court on the above petition on 4-5-1955. On 16-5-1955 the applicant was served with a charge-sheet by the State Government setting out the grounds on which the State Government thought that the applicant had been guilty of gross misconduct in the discharge of his duties as the President of the Board and he was asked to show cause why an order removing him from the Presidentship should not be passed against him.

By an order dated 9-5-1955, the Governor, In exercise of his powers under Sub-section (3) of Section 48, U. P. Municipalities Act, was pleased to order Immediate suspension of the applicant from the Presidentship of the Municipal Board, Shahjahanpur, pending completion of the proceedings started against him by the Government Order No. 3144G/XI-A.849/54, dated 9-5-1955, which I have already referred to in the earlier part of my judgment, giving notice to the applicant to show cause why he should not be removed for misconduct under Section 48, Municipalities Act.

Thereupon, the applicant filed another writ petition in this Court under Article 226 of the Constitution which is No. 517 of 1955. On 14-7-1955, notice was issued by registered post to the opposite parties by this Court and an interim order was passed suspending the operation of the order of the Government dated 9-5-1955 suspending the petitioner from the Presidentship of the Municipal Board, till further ordera (2) The two petitions, therefore, were heard together and it is convenient to dispose of the two petitions by one order.

3. Petition No. 472 of 1955 has been filed by the President, Municipal Board, Shanjahanpur through Sri Bishanchandra Seth, while petition No. 517 of 1955 has been filed by Sri Bishanchandra Seth in his personal capacity. Counter-affidavits have been filed on behalf of the opposite parties in the two petitions. It will be convenient to deal separately with both the petitions.

So far as the petition No. 472 of 1955 against the order of the District Magistrate dated 7-4-1955 is concerned, in the counter-affidavit, it is stated that the District Magistrate received complaints, that the President did not properly record the proceedings of the meeting of the Board, On 22-3-1955, the District Magistrate received a specific complaint signed by 19 members of the Board complaining that the President of the Board wrote resolutions in accordance with his wishes and irrespective of the real decision of the Board. It was further complained that he would start meetings of the Board before the appointed time and exclude the opposition from taking part in it. It was requested that a responsible officer be deputed to the meeting to supply first-hand information to the Collector.

On 26-3-1955, Sri K.B. Gupta, one of the signatories of the complaint dated 22-3-1955, informed the District Magistrate that the meeting of the Board was to be held on 29-3-1955. The District Magistrate, thereupon, by his order dated 26-3-1955, directed the City Magistrate to watch! and note down the proceedings of the meeting from the public gallery.

On 28-3-1955, the President wrote a letter, which I have already referred to earlier in my judgment, to the District Magistrate and a reply to the said letter was sent by the District Magistrate. On 29-3-1955 the meeting was held at 8.00 p.m. The City Magistrate, however, reached there at 3.15 p.m. It is conceded in the counter-affidavit that the City Magistrate took his seat in the vacant space which was Provided for the public to sit but he did not sit by the side of the President of the meeting as has been alleged by the petitions.

The President, on seeing the City Magistrate in the meeting hall, stood up and announced that as the Magistrate was present, he would adjourn the meeting as a protest. Thereupon the City Magistrate submitted a report to the District Magistrate. The adjourned meeting was to be held on 30-3-1955. In the meantime, the District) Magistrate received another request signed by 20 members of the Board to depute the City Magistrate to watch the proceedings of the meeting to be held on the next date.

The City Magistrate was again asked by the District Magistrate to go and watch the proceedings and on the 30th of March, the meeting was again adjourned as a protest against the presence of the City Magistrate. It is again denied that the City Magistrate sat by the side of the President. On 6-4-1955, the District Magistrate again received a letter signed by 8 members of the Board intimating him that the President was going to hold the meeting in camera on the 7th April and they further requested the District Magistrate to depute the City Magistrate to be present at the meeting. The order dated 7-4-1955 was thereupon, passed by the District Magistrate.

At 5.00 p.m. on the same day, the District Magistrate contacted the applicant on phone and communicated to him the substance of the order The District Magistrate purported to pass an order under Section 34 (1) (b), Municipalities Act. The order was passed 'bona fide' in the interest of general public and of the Board and there was no ulterior motive behind it. It is stated in the counter-affidavit that the action taken by the District Magistrate was in good faith and in 'bona fide' discharge of his duties with no 'mala fide' intentions.

It is asserted that the City Magistrate could attend the meeting as a member of the general public to watch and note down the proceedings of the meeting and there was no intention on; the part of the City Magistrate to interfere in any way with the proceedings of the meeting.

It is further contended in the counter-affidavit that in view of the attitude adopted by the applicant, it was not thought necessary by the District Magistrate to give 'any opportunity to the applicant to show cause against the order of 7-4-1955. Further, the matter was urgent and there was no time left to give any opportunity to the applicant.

4. The main contention of the applicant is that the order passed by the District Magistrate on 7-4-1955 was without jurisdiction. He had no power to direct the applicant not to hold a meeting in camera. Section 34 of the Act did not apply to the facts of the present case. There is no dispute so far as the essential facts of the case are concerned between the parties. The main controversy, therefore, is whether Section 34, Municipalities Act applies to the present circumstances and the order passed by the District Magistrate was within his competence.

There is, as I have already said, a slight controversy between the parties with regard to the fact whether the City Magistrate on the 29th and 30th March, 1955 sat by the side of the President or sat in the public gallery, but for the purpose of disposal of the present petition, it is not necessary to consider the controversy and decide it.

Further, whether the City Magistrate had a right to watch the proceedings of the meeting from the public gallery as a member of the general public or that he went there to supervise the proceedings and not with the object of only watching the proceedings are again questions which need not be considered for the disposal of the present petition. The President has to preside over the meetings of the Board. It is only in the absence of the President or the Vice-President that the members present have got a right to elect one of them to preside over the meeting. Section 86, Municipalities Act provides that "(1) There shall be at least one meeting of the board in every month to be held on a day fixed by regulation or of which notice has been given in a manner provided by regulation in this behalf."

Sub-section (4) , of Section 86 provides that "Every meeting shall be held at the municipal office (if any) or other convenient place of which notice has been duly given."

The President has been given power to maintain order in the meeting. Right has also been given to certain officers of the Board to attend and speak in the meetings. In the absence of anything express in the Municipalities Act, the President, as the Presiding Officer of the Meeting, has got every right to maintain order in the meeting. Section 33 of the Act provides that "A work, or institution, constructed or maintained in whole or part at the expense of a board, and all registers, books, accounts or other documents relating thereto shall at all times be open to inspection by such officers as the State Government appoints in this behalf,"

Section 35 provides that if, upon representation made or otherwise, it appears to the State Government or the prescribed authority that the Board has made default in performing a duty imposed on it by or under this or any other enactment, the State Government or the prescribed authority, as the case may be, may, after calling for an explanation from the Board and considering any objection by the Board to action being taken under this section, may fix a time, for the performance of that duty and if the duty is not performed within the period so fixed, the prescribed authority or the State Government may appoint the District Magistrate or any other officer not below the rank or' a Deputy Collector to perform the duty and the expenses will have to be paid by the Board.

Section 36 provides that in cases of emergency the District Magistrate may get any work done and the expenses incurred for that purpose may be charged from the Municipal Board. These two sections only authorise the State Government or the prescribed authority in cases of emergency to get certain constructions made or work done which the Board is bound to execute and charge the expenses.

A certain duty, which a Board has to perform, can also be performed by an officer on the directions of the State Government or the prescribed authority in case the Board fails to perform its duty after being given time to do so. Certain officers of the Government are also authorised to inspect the records of certain institutions of a Board but none of these sections authorise the District Magistrate to direct a President of a Municipal Board not to hold a meeting in camera and to allow the members of the public to be present at the meeting.

It is not the duty of the President under any of the provisions of the Act or the Rules framed thereunder to allow the members of the public to be present in every meeting and consequently it cannot be said that in the present case the District Magistrate directed the President to perform any of the duties cast on the President and even if it be assumed that the President had a duty to allow the public to be present in the meeting and had no power to exclude them from the meeting, no opportunity was given to the President to perform his duties and the only direction, even in the event of the President's failure to perform his duties, which could be issued by the District Magistrate, was to get the duty done through an officer but he had no power under, any of these sections to direct the President not to hold the meeting in camera. Section 34 (1-B), which has been relied upon by the District Magistrate, may be referred to. It provides as follows :

"The State Government may, of its own motion or on report or complaint received, by order prohibit the execution or further execution of a resolution or order passed or made under this or any other enactment by a Board or a committee of a board or a joint committee or any officer or servant of a board or of a joint committee, if in its opinion such resolution or orders is prejudicial to the public interest, and may prohibit the doing or continuance by any person of any act in pursuance of or under cover of such resolution or order."

This section empowers the prescribed authority only to prohibit the execution or further execution of any resolution or order passed by a Board, a committee of a Board, a joint committee or any officer or servant of the Board, if in the opinion of the prescribed authority such resolution or order is prejudicial to the public interest.

There was neither any resolution passed by the Board, the execution of which was being prohibited by the District Magistrate, nor any order passed by an officer or servant of the Board which was prejudicial to the public interest. If there is any resolution passed by the Board which is likely to prejudice the public interest, or there is any order by an officer or a servant of the Board, the Board may be prohibited from executing its resolution or the officer or the servant may be prohibited from carrying out the order.

But, in the present circumstances, to my mind, the District Magistrate had no power to direct the President to hold the meeting of the Board in any particular manner. Having regard to the entire scheme of Section 34, it will be clear that the object underlying Section 34 is that there may be

certain resolution passed by a Board which may be objected to by the public as it may be against their interest and it may be necessary, as an emergency measure for the district authorities, to stop the execution of that resolution.

In that event the power under Section 34 may be exercised and when the prescribed authority proposes to exercise its powers under Section 34, it has to report the matter to the State Government but the District Magistrate has no power under Section 34 to regulate the conduct of a meeting. As I have already pointed out the President enjoys the confidence of the public so long as a no-confidence motion has not been successfully passed against him. He is the representative of the public.

He has to preside over the meeting of the Board and it will be against all established principles of democracy if the power is given to the authorities to regulate the conduct of the meetings by an executive order. The District Magistrate in the event of the likelihood of the breach of the peace may have power under any other enactment to stop a meeting, but it is wholly against the object of Section 34 to empower the prescribed authority to direct the President to conduct the meeting in a particular manner and at a particular place.

If there had been complaints made to the District Magistrate that the President wrongly recorded the minutes of the proceedings of the meetings, the State Government may have power to deal with the situation under Section 48, Municipalities Act by taking steps against the President but the District Magistrate had no authority under Section 34, on the complaint being made by some of the members, to regulate the conduct, of the meeting.

The Standing Counsel has not been 'able to point out any other provision in the Municipalities Act which authorises a District Magistrate to pass such an order. In my judgment, therefore, the order of the District Magistrate of 7-4-1955 was wholly without jurisdiction and must be quashed and the petition No. 472 of 1955 must be allowed to the extent that the order of 7-4-1955 passed by the District Magistrate is quashed.

5. In the petition No. 517 of 1955, the prayer of the petitioner is that a writ of certiorari be issued quashing the order passed by the State Government on 9-3-1955 and a writ of mandamus be issued directing the opposite parties to treat the applicant as a duly authorised President and not to interfere in any manner against the discharge of his duties as the President and further, not to proceed with any inquiry against him. The order of the State Government, which is sought to be quashed, has been filed along with the petition as Annexure F. This is an order passed by the Governor, communicated through the District Magistrate, Shahjahanpur to the petitioner and by that order the petitioner has been immediately suspended from the Presidentship of the Municipal Board, Shahjahanpur in exercise of the powers conferred on the Governor by Sub-section (3) of Section 43, Municipalities Act.

As I have already mentioned, the State Government had also on that very date issued notice to the applicant to show cause why he should not be removed from the Presidentship. Along with that notice a charge-sheet was given to the applicant. The order of suspension was to be operative

pending the completion of the proceedings started against the applicant by means of the Government order mentioned above.

It is, therefore, clear that the order of suspension was an order pending the inquiry initiated by the notice given to the applicant on 9-5-1955 to show cause against the proposed order of dismissal. If the proceedings are quashed, the order of suspension will automatically come to an end and, therefore, it is necessary first to consider whether the applicant is entitled to the relief of quashing the proceedings started against the applicant under the notice of 9-5-1955.

The Standing Counsel, who appeared for the opposite parties, stated that the order of suspension has to be examined independently of the proceedings initiated against the applicant on the notice of 9-5-1955. Relief No. 1, by which the petitioner has sought the quashing of the order of suspension, has to be considered independently of the second relief and if this Court comes to the conclusion that the order of suspension passed by the State Government, was within its jurisdiction and it cannot be quashed, any decision given as regards the second relief should not affect the decision of this Court as to the first relief claimed by the petitioner.

I do not think that this contention is sound. The order of 9-5-1955 suspending the petitioner itself states that the suspension is pending the completion of the proceedings started against the applicant by the order of the Government dated 0-5-1955. If the proceedings can legally go on against the applicant, the order of suspension obviously is within the competence of the State Government.

Consequently, it is to be first considered how far the petitioner is entitled to relief No. 2 claimed by him. The U. P. Municipalities Act was amended by U. P. Act 7 of 1953. Section 48, which provides for the removal of the President, was also amended by the Act and in Sub-section (2) of Section 48, for the old Clause (a), the following was substituted ;

"(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."

In Clause (b), a new Sub-clause (vi) was added which reads as follows :

"(vi) been guilty of gross misconduct in the discharge of his duties."

A new Sub-section (3) was added which provides as follows :

"(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."

Section 48, therefore, as amended, which is material for the disposal of this case, reads as follows :

"The State Government may, at any time, if it is satisfied 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....."

Under the proviso to this section, the State Government has to give him an opportunity of explaining his 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.

Sub-section (3) of Section 48 has given the power to the State Government to suspend a President pending an inquiry into his conduct, on the ground that he has committed misconduct. The power to remove has been given to the State Government both in cases where there has been a failure on the part of the President to perform his duties and also in cases where the President has been found guilty of gross misconduct.

The only difference between Sub-sections (2) (a) and (2) (b) (vi) is that under Clause (a) of Sub-section (2), the State Government can either remove him or give him a warning, but in the event of the President having been found guilty of gross misconduct, the only order which can be passed by the State Government is to remove him and further, the power to pass an order of suspension pending an inquiry has only been given in cases, where the proceedings are taken under Clause (b), (vi) of Sub-section (2) of the section.

The proviso applies to both the cases, whether the State Government proposes to give a warning to the President under Sub-section (2) (a) of Section 48 or whether action is proposed "to be taken under Sub-section (2) (b) (vi) of the section.

6. A preliminary objection has been taken By the State Government that the applicant is not entitled to any order at this stage as the petition is premature. The inquiry is still pending before the State Government. On the materials before it, the State Government may come to the conclusion that the conduct of the petitioner does not amount to a misconduct and no order ultimately may be passed removing the applicant or if, after the consideration of the entire evidence, the State Government comes to the conclusion that the President should be removed, may remove him.

In that event, when the final orders are passed by the State Government, it may be open to the applicant to come to this Court under Article 226 of the Constitution but the powers under Article 229 of the Constitution should not be exercised in favour of the applicant at this stage. Article 226 in terms gives much wide powers to this Court.

This Court can issue any direction or order including a writ in the nature of mandamus, certiorari or quo warranto for the enforcement of a fundamental right or for any other purpose. It does not limit the powers of this Court to be exercised only when final orders have been passed by the Government or any other subordinate authority or tribunal. Reliance was placed by the Standing Counsel on a case of the Supreme Court of the United States reported in -- 'Joint Antifascist Refugee Committee v. J. Howard McGrath', (1951) 95 Law Ed. 317 (A). Particular reference was made to the following

observation at p. 844 :

"Although a litigant is the person most directly affected by the challenged action of the Government, he may not have standing to raise his objections in a Court if, the action has not, as it were, come to rest. Courts do not review issues, especially constitutional issues, until they have to..... There is no standing to challenge a preliminary administrative determination, although the determination itself causes some detriment to the litigant.... Nor does the reservation of authority to act to a petitioner's detriment entitle him to challenge the reservation when it is conceded that the authority will be exercised only on a contingency which appears not to be imminent."

There can be no objection to the proposition that generally this Court will not exercise its powers under Article 226 of the Constitution interfering with an interim administrative determination. In that very case, at p. 845, it was observed that " 'Finality' is not however, a principle inflexibly applied. If the ultimate impact of the challenged action on the petitioner is sufficiently probable and not too distant, and if the procedure by which that ultimate action' may be questioned is too onerous or hazardous, 'standing' is given to challenge the action at a preliminary stage.....

It is well settled that equity will enjoin enforcement of criminal statutes found to be unconstitutional "when it is found to be essential to the protection of the property rights as to which the jurisdiction of a Court of equity has been invoked. And if the determination challenged creates a status which enforces a course of conduct through penal sanctions a litigant need not subject himself to the penalties to challenge the determination."

I have already observed in the present case that it proceedings are started under Section 48 (2) (b) (vi), it gives power to the State Government to pass an order of suspension which necessarily implies temporary termination and a President is subjected to a penalty by a preliminary administrative determination itself. No doubt the power under Article 226 of the- Constitution is a discretionary power and it is well settled that ordinarily this Court will not interfere with any proceedings before the proceedings are terminated or quash any order if it is only an interlocutory order.

The contention of the petitioner, however, is that if he is able to show that the condition precedent for the exercise of powers by the State Government under S, 48, Municipalities Act do not exist in the present case or that the grounds, on which the power is sought to be exercised, do not come within the ambit of Section 48 itself, it is open to this Court to stop the proceedings and direct the State Government not to go on with the inquiry.

It is not necessary, in the circumstances referred to above, for the petitioner to wait till the final orders have been passed, specially so when the State Government has been given power to suspend the President pending such an inquiry.

Suspension Itself amounts to temporary removal of the President and if the power has been given by a statute to the State Government to temporarily remove the President pending an inquiry and no

procedure has been provided by which, before passing an order of suspension reasonable opportunity is given to the applicant to show cause against such a temporary removal, it) is all the more necessary that this Court should interfere with the order of the State Government directing an inquiry into the conduct of the petitioner before the final orders are passed, if this Court is satisfied that the conduct attributed to the applicant and on which action is proposed to be taken against him does not come within the ambit of Section 48.

It has also been urged by the applicant that the order directing the inquiry should be quashed in this case inasmuch as it is a 'mala fide' order. The conduct, on which action is proposed to be taken, can be a ground for taking action under Sub-section (2) (a) of Section 48 and the State Government has deliberately characterised the conduct as amounting to misconduct under Sub-section 2 (b) (vi) in order to assume jurisdiction to pass an order of, suspension under Sub-section (3).

The scheme of Section 48 is that certain grounds are enumerated on which it is open to the State Government either to give a warning to the President or to remove him. If the State Government proposes to take action, namely, either to give a warning to the President or to remove him on any of the grounds enumerated in Clause (a) and (b), it is obligatory on the part of the State Government before passing a final order, to give, an opportunity of explaining the conduct on account of which it is proposed to take action against him.

The only requirement of the proviso is that an opportunity has to be given to the applicant to explain his conduct on account of which it is proposed to take action against him. Up to the stage where the State Government makes up its mind to take action or proposes to take action, it is not necessary to give any opportunity to the President to explain his conduct.

It is only when the State Government has made up its mind which has resulted in the form of a proposal to take action and which is further manifested by a notice given to the applicant to show cause, that an opportunity has to be given to the President to explain his conduct. It can be said that the inquiry, pending which the order of suspension is to be operative, starts with the giving of notice to the President to explain his conduct.

The order removing the President or the proposal to take action against the applicant may themselves be administrative orders but the inquiry started on the notice and terminating in the final order of removal or warning is an inquiry conducted by the State Government and, can be regarded as a quasi-judicial proceeding and whether the conditions precedent for the starting of such an inquiry have been fulfilled in the present case or that the grounds on which an inquiry is sought to be conducted do not come within the ambit of Section 48, are, to my mind, questions which can be gone into by this Court and necessary directions can be issued by this Court.

It is urged by the Standing Counsel that the only limitation placed on the powers of the State Government under the proviso is to give an opportunity of explaining the conduct of the President and to record reasons for the decision. No other! limitation has been placed on the powers of the 'State Government under the proviso and the question whether there was material for the State Government to propose to take action under the section or to come to a conclusion whether a case of

misconduct has been established against the petitioner are matters within its exclusive jurisdiction and they are not amenable to the scrutiny by this Court under Article 226 of the Constitution.

It is true that so long as the intention of the State Government remains a mere intention, this Court cannot be moved to interfere with that intention under Article 226 of the Constitution but when the intention takes the form of a proposal communicated to the petitioner by means of a notice and an inquiry into the conduct of the applicant is started by giving him an opportunity to explain his conduct and further giving a power to the State Government to temporarily remove the President from the office of Presidentship, it can be scrutinised by this Court under Article 226 of the Constitution.

The power necessarily to scrutinise has its limitations and it may not be open to this Court to substitute its own judgment over the judgment of the State Government on a question of facts but it is certainly open to this Court to see if the conditions precedent for the exercise of the powers under Section 48 have been fulfilled or the power exercised by the State Government does not come within the scope of Section 48 or that it is a 'mala fide' exercise of the power.

The contention of the State Government further is that the charges specifying the conduct of the applicant which have led the State Government to take action against him are only in the nature of an evidence or the material before the State Government for making up its mind to take action under Section 48, and it is not open to this Court to examine the material and to decide that the material does not make out a case of misconduct. In my judgment, the argument of the opposite parties can as well be advanced against the final order passed by the State Government.

Even when the State Government has come to the conclusion* that the petitioner should be, removed on certain materials before it and a petition is filed in this Court, the State Governments can again raise the same objection and say that) whether certain facts amount to misconduct or not is within the exclusive jurisdiction' of the State Government and cannot be interfered with. The question, therefore, that the point has been raised at a stage when no final orders have been passed, does not to my mind make any difference so far as the consideration of the grounds on which that point is based is concerned.

The Proviso only provides that an opportunity should be given to the President to explain his conduct on account of which it is proposed to take action against him. It does not contemplate an opportunity to the State Government to act as a prosecutor and to produce further material or evidence in support of the charge. The President has also not been given any opportunity under the proviso to produce oral evidence or to demand personal hearing.

In the circumstances, the only material on which the action is sought to be taken is the conduct of the petitioner referred to in the charge. If and when a fresh conduct is made a further ground for taking action, fresh opportunity will have to be given to the President to explain his conduct with regard to that fresh charge but it cannot be urged in defence that any ground may be brought before the State Government during inquiry from which it may come to the conclusion that the petitioner had committed misconduct in the discharge of his duties.

The State Government may, while conducting the inquiry, look into the evidence necessary to prove or disprove the charges levelled against the President but to my mind it cannot go beyond the charges mentioned in the notice to come to the conclusion that the petitioner committed misconduct in the discharge of his duties.

It is, therefore, permissible to the petitioner to urge before this Court that the charges framed against the petitioner do not come within the ambit of the section or that the action propose to be taken is a 'mala fide' exercise of the power and should be quashed.

7. It is necessary to examine the charges framed against the applicant at this stage. The preamble of the charges is in a very general term, It reads as follows :

"That he has failed in the performance of his duties as President of the board and made lapses which show that he has been guilty of gross misconduct in their discharge."

This preamble by itself does not contain the conduct on which the action is proposed to be taken and if it had stood by itself and an opportunity had been given to the applicant to explain his conduct, it could have been legitimately argued by the petitioner that the charges were vague and it was not possible for him to give any "explanation of such charges. The conduct, therefore, on account of which it is proposed to take action and which the petitioner has been asked to explain is to be found in the instances enumerated in the charge.

The first instance referred to in the charge is 1. (a) that the applicant failed to convene statutory monthly meetings of the Board in accordance with the provisions of the U. P. Municipalities Act. In November, 1954, he did not convene any meeting. In December, 1954, three meetings were convened which were all adjourned. The first meeting was convened on 12-12-1954 and was adjourned.

Even if this meeting was adjourned for want of quorum, this adjourned meeting could have been held on any subsequent date, whether there was prescribed quorum or not. Meetings were subsequently convened on 14-12-1954 and 15-12-1954; but they were also adjourned, with the result that in the month of December there was, in effect, no meeting. Again in January and February, 1955, the President did not convene any meeting at all.

(b) In the month of March, 1955, it was represented to the District Magistrate that the President had not been recording the minutes of the meetings faithfully and correctly, and so it was requested that some officer may be deputed to watch the proceedings of the meeting convened for 29-3-1955 for considering the Board's budget for the current year. The City Magistrate was accordingly deputed by the District Magistrate to watch the proceedings.

As soon as the President found the City Magistrate present, he irregularly and without taking the sense of the house, although Its meeting had already commenced adjourned the meeting for the next day. On the next day also he irregularly adjourned the meeting when he found the City Magistrate

present, and passed orders for holding" the meeting in camera on 7-4-1955, although he was fully' aware that the Board's meetings are normally open to public and that the District Magistrate had given him full assurance that the City Magistrate was there only to watch the proceedings as a member of the public. Thus there was no meeting in March, 1955 also.

(c) Subsequently, as it was represented to the District Magistrate that in case the meeting scheduled for 7-3-1955 was held in camera, it was likely to result in a breach of peace, the District Magistrate, by his order dated 7-4-1955 required the President to hold that meeting in public in the Municipal Board's office. Thereupon the President did not hold that meeting also, with the result that there was no meeting of the Board even in April, 1955.

2. He failed to place the revised budget for 1954-55 before the Board and to get it sanctioned in time, although in accordance with the provisions of the U. P. Municipalities Act, the revised budget should have been framed and passed as soon as possible after the 1st day of October,. 1954.

3. He failed to take timely steps for the election Of the Vice-presidents and various sub-committees of the Board for the year 1955, knowing full well that the terms of the previous Vice-Presidents and sub-committees were due to expire on 31-12-1954, with the result that these important elections have not yet been held.

4. He did not present to the Board in time the budget for the year 1955-56, and even when he did place it belatedly before the Board at its meetings scheduled for March 29 and 30, and April 7, 1955 he irregularly adjourned these meetings ' with the result that the Board could not consider the budget for 1955-56 at all and is now functioning without a duly passed budget.

8. On these charges it appears that in the months of November and December, 1954 and January and February, 1955 no statutory monthly meetings were held. Sometimes when the meetings were convened, they were adjourned. In the-month of March again, the trouble between the District Magistrate and the President arose and the meeting could not be held on 29-3-1965 as the president protested against the presence of the City Magistrate in the meeting under the direction of the District Magistrate.

In April also the meeting could not be held as the dispute between the President and the District Magistrate resulted in the order of the District Magistrate directing the President not to hold the meeting in camera. The revised budget could not be placed in the meeting. The budget could not be placed as the meeting could not be held in March and April, 1955.

So far as the charge of not holding the meetings in the months of March and April is concerned, it is admitted in the charge that the meeting was not held due to the dispute between the President and the District Magistrate and it is contended by the applicant that the question whether the President had power to hold the meeting in camera and not to allow outsiders to be present in the meeting or that the District Magistrate has power to direct the President not to hold the meeting in camera are questions which were the subject-matter of the other connected writ petition.

It cannot, therefore, be made a ground of charge of misconduct against the applicant. It is very strongly contended by the applicant that at any rate, it was highly improper on the part of the State Government to have issued notice to the applicant to show cause against the proposed order of removal on grounds which were the subject-matter of decision by this Court in an earlier writ petition of which notice had already been issued to the opposite parties. It was really pre-judging the issue in coming to a decision before the final determination by this Court that the petitioner was not justified in holding the meeting in camera and not carrying out the orders of the District Magistrate.

In my judgment the charges framed can only amount to an allegation that the statutory meetings were not in fact held by the applicant under the provisions of the Municipalities Act. The question for consideration is whether the failure of the President to hold statutory meetings is a ground which comes within the ambit of Section 40 and can be made subject of proceedings for removal under Section 48 (2) (b) (vi).

It is urged that even if it is non-compliance with the provisions of the Municipalities Act, it is a ground covered by Section 48 (2) (a) that there has been a failure on the part of the President in performing his duties and not a misconduct. A failure on the part of the President to perform his duties under the Act may in certain circumstances, amount to misconduct but the allegation that the meetings were not held does not by itself, to my mind, amount to a misconduct.

So far as failure to hold meetings in March and April, 1955 is concerned, it is due to the dispute between the President and the District Magistrate which is the subject-matter of decision in the other writ petition. As regards the meetings to be held in November and December, 1954, nothing has been alleged to show that this was done deliberately with the intention of making any personal gain.

9. The next argument of the petitioner is that a mere omission to perform certain duties does not amount to a misconduct in the discharge of duties. If a person, who has to discharge certain duties, refrains from doing that act, he cannot be said to have committed any misconduct in the discharge of his duties, misconduct in the discharge of duties presupposes that the person purports to carry out his duties.

The omission to perform certain duties in certain cases may amount to misconduct but, as I have already pointed out, the circumstances have got to be mentioned in the charge itself. The charges only refer to the failure of the applicant to hold statutory monthly meetings and place the revised budget before the Board in time. They may amount to failure to carry out the duties and thus a failure on the part of the President in performing his duties within the meaning of Clause (a) of Sub-section (2) of Section 48 and not misconduct within the meaning of Section 48 (2) (b) (vi).

Reliance was placed by the opposite parties on the case of -- 'Purushottamchandra v. State of Uttar Pradesh', AIR 1955 All 106 (B). In that case, action was taken by the State Government against a member of the Municipal Board of Ghaziabad under Section 40 of the Act for his removal on the ground that in the opinion of the State Government the member had so flagrantly abused his position as a member of the Board as to render his continuance as a member detrimental to the

public interest.

The petition was rejected and it was held by this Court that there was no want of jurisdiction on the part of the State Government to pass a final order under Section 40 (3) of the Act and consequently no writ of prohibition could issue Directing the State Government not to proceed with the inquiry against the petitioner in accordance with the provisions of the Municipalities Act. The decision was based on the language of Sub-section (3) of Section 40 which provides that the State Government may remove from the Board a member who, in its opinion, has so flagrantly abused in any manner his position as a member of the Board as to render his continuance as a member detrimental to the public interest.

The condition precedent for the exercise of power under Section 40 (3) was the opinion of the State Government. It was the subjective determination on which the power of the State Government to pass an order depended. In Section 48, on the contrary, the words used are that the State Government may at any time, if it is satisfied that a President has committed gross misconduct in the discharge of his duties, remove him.

The satisfaction of the State Government necessarily means the satisfaction based on materials before the State Government. It is an objective determination by the State Government and the existence of gross misconduct on the part of the President is a condition precedent for the exercise of the power under Section 48. In the case referred to above, at p. 109, it was observed as follows :

"The basis for taking action is the opinion of the Government and not the actual existence of the fact that the position has been flagrantly abused. If the power of the State Government to take action had depended on the existence of the fact that the member had flagrantly abused his position, it might have been possible for the Courts to examine whether there was material for coming to such a view. When the law requires that the State Government has to form, its opinion and empowers the State Government to take action on that opinion, the Courts cannot examine whether the opinion formed by the Government is correct or incorrect. It is only necessary to make sure that the Government has formed the opinion as required by law.

There may be cases where it may be possible for the Courts to interfere even if the opinion has been formed by the Government, when that opinion is based on reasons placed on record under Sub-section (4) of Section 40 of the Act which bear no reasonable relation to the formation of that opinion. That is, however, a point which need not be decided at this stage."

In the first place this case lays down that wherever the power depends upon the opinion of the State Government, the opinion of the State Government cannot be examined as the power does not depend upon the existence of any fact but merely upon the opinion of the State Government. In, the present case, as I have already pointed out, the power to take action under Section 48 depends upon the existence of gross misconduct on the part of the President.

It is not the opinion of the State Government which is the only requirement for tatting, action under Section 48 but it is the satisfaction of the State Government on certain materials before the State Government. It has further been urged that the final order passed by the State Government is based on reasons and after these reasons have been given, they can be examined by Courts and if they bear no reasonable relation to the formation of that opinion, the final order can be quashed.

To my mind, if the conduct attributed to the President on which proceedings are taken against him and he is asked to explain, does not come within the ambit of the section itself, it is open to this Court to issue a writ of prohibition directing the State Government not to proceed with the inquiry.

10. I, therefore, allow Petition No. 472 of 1955 with costs and quash the order of the District Magistrate dated 7-4-1955.

11. I also allow Petition No. 517 of 1955 with costs and quash the notice issued to the applicant by the State Government dated 9-5-1955 to explain the charges. The order of suspension) passed against the applicant oh 9-5-1955 is also quashed.