

## **Dr. Pyare Lal Gahlot And Anr. vs The State Of Uttar Pradesh, Lucknow And ... on 8 October, 1952**

**Equivalent citations: AIR1953ALL195, AIR 1953 ALLAHABAD 195**

**Author: V. Bhargava**

**Bench: V. Bhargava**

### **JUDGMENT**

V. Bhargava, J.

1. This is a petition under Article 226 of the Constitution presented by the Chairman and a member of the Municipal Board of Firozabad which was superseded by a notification issued by the State Government under Section 30, U.P. Municipalities Act. By this petition, the petitioners seek a declaration that the order of supersession was void and want a direction that they may be restored to their positions as Chairman and member of the board and allowed to function as such.

2. The principal ground, on which this petition has been presented, is that, before the order of supersession was passed, the State Government did not give an opportunity to the petitioners or the board to give evidence to show that the charges, on account of which the board was superseded, were baseless. Learned counsel's contention was that, under Section 30, U.P. Municipalities Act, before superseding any board, the State Government was bound to give an opportunity to the board to give evidence in support of its contention that the charges framed against it were incorrect. Section 30, U.P. Municipalities Act only requires that the State Government, before superseding the Board, should "take into consideration the explanation of the board." There is no requirement under that Section that the State Government should "give an opportunity to the board to show cause" against the action proposed to be taken against it. It is only in cases where the statute casts a duty on the authority passing the order to give an opportunity to show cause that it is necessary to take evidence or to make full enquiries. In a case where the statute only requires the explanation to be considered, it is enough if the authority gives a reasonable opportunity for submission of the explanation and considers that explanation. In the affidavit filed before us on behalf of the petitioners, there is no allegation that reasonable opportunity for submission of explanation was not given. The grievance is that, though an opportunity to give an explanation was given and an explanation was, in fact, submitted, the petitioners were given no opportunity to give evidence in support of their explanation. The contention on the language of Section 30, U.P. Municipalities Act has no force at all.

3. Learned Counsel argued that, by Act 7 of 1949, the Legislature had introduced a proviso to Section 30 laying down that, before an order of supersession is passed, an opportunity must be given to the

President to show cause and though this proviso was repealed by the U.P. Municipalities (Supplementary and Validation) Act, 1951, it must be held that, even after the repeal of the proviso, a similar opportunity to show cause must be given to the board. We are unable to see that there is any force at all in this argument. Even, in the original U.P. Municipalities Act, 1916, the only right, which was given to the board before an order of supersession could be passed was the right to give an explanation and a duty was cast on the Government to consider that explanation. This provision was maintained even after Section 30 was amended by U.P. Act 7 of 1949. An additional condition was provided in the proviso giving a right to the President to show cause obviously because, after that amendment, the President was not to be elected by the board and was not to be treated as a representative of the board but was to be directly elected by the whole electorate of the municipality. When the amending Act of 1951 was passed, the direct election of the President by the electorate of the municipality was again done away with and, consequently, the proviso became unnecessary. The right, which was granted to the President by virtue of his special position, was, therefore, taken away. The right of the municipal board to give an explanation, which had been maintained after the amendment Act of 1949, was continued even after the amendment Act of 1951. In the present case, since the board was given a reasonable opportunity to give the explanation and the explanation given by the board was considered by the Government, it cannot be said that the order of supersession has not been passed in accordance with the provisions of Section 30, U.P. Municipalities Act.

4. Learned counsel urged that, in passing the order of supersession under Section 30 of the Act, the State Government had to act as a judicial or quasi-judicial body and was bound to give an opportunity to show cause which included the right to give evidence. We cannot see any force in this argument when Section 30 itself clearly lays down the procedure which is to be followed in passing the order of supersession and merely requires the consideration of the explanation of the board without an opportunity to give evidence.

5. Learned counsel also urged that, before passing the order of supersession, the State Government had not taken any action under Section 35, U.P. Municipalities Act and, therefore, the order of supersession was invalid. Section 35 provides an alternative procedure which might be adopted by the State Government to ensure that the duties of a board are properly carried out. It is not a condition precedent to the Government proceeding under Section 30 that it must first act under Section 35. This argument, therefore, has no force and the mere omission to take action under Section 35 does not invalidate the order of supersession.

6. Learned counsel further urged that the provisions of Section 31(b), U.P. Municipalities Act were ultra vires of the U.P. Legislature but we do not think that it is necessary to go into this question in this case as the validity or invalidity of Section 31 (b) does not, in any way affect the reliefs which have been claimed in this petition. Further, this point was not taken as one of the grounds for asking the reliefs prayed for.

7. There is, consequently, no force in this writ petition and it is dismissed with costs which we assess at Rs. 160/-.