

Tarlochan Dev Sharma vs State Of Punjab & Ors on 25 July, 2001

Equivalent citations: AIR 2001 SUPREME COURT 2524, 2001 (6) SCC 260, 2002 AIR SCW 2643, 2001 AIR SCW 2689, 2001 (7) SRJ 327, (2001) 5 SUPREME 361.2, (2001) 5 JT 645 (SC), 2001 (21) OCR 322, 2001 (2) CURCRIR 313, 2001 (3) LRI 1147, 2001 (4) SCALE 472, 2001 (5) JT 645, (2001) 5 SUPREME 361.1, (2001) 3 CRIMES 364.1, (2002) 2 LANDLR 101, (2002) 1 MAD LW 19, (2001) 4 SCJ 277, (2001) 3 RECCIVR 809, (2001) 4 SCALE 472, (2001) WLC(SC)CVL 677

Author: R.C. Lahoti

Bench: Chief Justice, R.C. Lahoti

CASE NO.:

Appeal (civil) 1889 of 2000

PETITIONER:

TARLOCHAN DEV SHARMA

Vs.

RESPONDENT:

STATE OF PUNJAB & ORS.

DATE OF JUDGMENT: 25/07/2001

BENCH:

CJI & R.C. Lahoti

JUDGMENT:

R.C. Lahoti, J.

The appellant was elected a Councilor of Rajpura Municipal Council in January, 1998. In the month of April, 1998, he was elected as President of the Municipality. He had held the office hardly for a period of four months when he was served with a notice dated 19.8.1998 issued by the Principal Secretary, Department of Local Government, State of Punjab requiring him to show cause why he be not removed from the post of President and of member of the Municipal Council and also why he be

not restrained from contesting elections of the Municipal Council for the next five years. The notice levelled three charges against the appellant. The first two charges are redundant in as much as the same have been found not substantiated and hence not acted upon. The third charge only needs to be dealt with on which alone is founded the order of removal from Presidentship which was impugned by the appellant by filing a writ petition before the High Court. Charge no.3 is extracted from the show cause notice and reproduced hereunder:-

3. . the Executive Officer vide his letter No. 6416 dated 5.6.1998 have informed that the Municipal Council, had invited the tenders for purchase of the Fogging Machine as per the rules and after completion of all the formalities Fogging Machines were brought and tested for many days in different wards of Municipal Council but you asked the Executive Officer that payment of this machine should not be made. Due to this reason the working of Municipal Council have been obstructed. Whereas to purchase this machine the funds from the District Planning Board have been received by the Municipal Council. But Deputy Commissioner, Patiala had also ordered the Municipal Council, to purchase this Fogging Machine. This action of yours is against the interest of the Municipal Council.

4. Therefore, for the charges stated above it is proposed that action be taken against you under Section 22, 16(1)(e) and (2) of Punjab Municipal Act, 1911 and to remove you from the post of President/post of Member of the Municipal Council, Rajpura and to restrain you from contesting the election of Council for next five years.

[Underlining by us] The appellant gave a detailed reply. In so far as the abovesaid third charge is concerned, the appellant submitted as under:-

.. that the aforesaid fogging machine was delivered to the Municipal Council Rajpura for testing purposes and the said machine was worked out in various wards of the Municipal Council. Upon using and testing the said machine, it was found that the said machine has certain inherent defects and was not working properly. Because of the same defects and on the advice of the Municipal Council, the said machine was returned to the supplier and therefore, there was no question of making any payment of the aforesaid machine. It is apparent that the Executive Officer Shri Ashok Kumar wanted a defective machine to be purchased by the Municipal Council for his personal gains. By any stretch of imagination the undersigned was not expected to approve the purchase of a defective machine and make the payment thereof causing a big loss to the Municipal Council. Under the circumstances, there is no question of any loss having been caused to the Municipal Council or any such act done by the undersigned which is against the interest of the Municipal Council. All the actions of the undersigned as a President of the Municipal Council have been taken in the best interest of the general public and in the interest of the Municipal Council and public exchequer. The so called report submitted by the Executive Officer of the Municipal Council Shri Ashok Kumar against the undersigned, through various communications dated 5.8.1998 and 3.8.1998 are out of personal vengeance and is a

calculated move made by him to harm the undersigned and to seek his removal so that the aforesaid Shri Ashok Kumar may carry out his evil designs with a free hand and without any obstruction.

The appellant was called for a personal hearing on 27.7.1999 before the Principal Secretary, Local Government. The appellant availed the opportunity of personal hearing and apart from making oral submissions, also submitted a written memo of his submissions reiterating, though by elaborating, the stand earlier taken by him. He also set out in very many details, how his presidentship of the Municipality in the background of the political party to which he belonged, was an eyesore to the political party and the politicians in power and the bureaucracy having joined hands with the politicians by submitting to their dictates, acting together they were determined to drive him out of the office. By order dated 1.10.1999 issued by Shri N.K. Arora, Principal Secretary to Government of Punjab, Department of Local Government, the appellant was informed that although there was doubt in allegations no. 1 and 2 but allegation no. 3 was substantiated and therefore the appellant was being removed from the presidentship of the Municipal Council, Rajpura. The relevant part of the order reads as under:-

I have gone through the facts of the case and have given due consideration to the claims and contentions advanced by the noticee on the one hand and the State representative on the other. Even if full benefit of doubt is given to the noticee in regard to allegation No.1 and 2, it is abundantly clear that in regard to allegation No.3, he has utterly failed to clarify his position. Instead, deep and distinct shadows of doubt and suspicion hover over his head as he has tried to mislead the Government and had patently resorted to falsehood. He clearly mentions in his reply that he had found the fogging machine defective on its official report and had thus ordered its return. There is thus no question for payment of the machine. Facts, however, tell a different story. During the trial run, the machine was found to be okay. The Executive Officer had prepared the cheque and signed the same on 20.11.1998. For over two months, the cheque was not presented to the bank. Eventually, it was presented on 22.1.1999 and the payment was made. In all fairness, the President should have not distorted the facts and got himself sunk into highly embarrassing situation. One fails to understand why in his reply, he states that the machine was returned and no payment was to be made. One also fails to understand why he kept the cheque in his custody for over 2 months. Circumstantial evidence, therefore, goes deeply against him. It appears to be a case of abuse of power and the conduct of the President is quite unbecoming.

Accordingly, Shri Tarlochan Dev Sharma is hereby removed from the presidentship of the Municipal Council Rajpura in exercise of powers vested in me under Section 22 of Punjab Municipal Act, 1911.

[Underlining by us] The appellant filed a writ petition before the High Court of Punjab & Haryana putting in issue the abovesaid order. A Division Bench of the High Court formed an opinion that the

High Court could not test the validity of the impugned order sitting like an appellate court merely because there could be a possibility of arriving at a conclusion different from the one arrived at by the competent authority, and therefore, the impugned order was not liable to be interfered with. The writ petition was directed to be dismissed. Feeling aggrieved by the impugned judgment of the High Court, the appellant has filed this appeal by special leave which leave has been granted.

The notice to show cause dated 19.8.1998 proposed a dichromatic action. What has followed at the end is removal from the office of President only. Therefore, the short question arising for decision in this appeal is: whether the impugned order of removal is sustainable within the purview of Section 22 of the Punjab Municipal Act, 1911 (hereinafter, the Act, for short)?

Section 22 of the Act read as under:-

22. Resignation or removal of President and Vice-President - Whenever a President or Vice-

President vacates his seat or tenders in writing to the committee his resignation of his office, he shall vacate his office; and any president or vice-

president may be removed from office by the State Government on the ground of abuse of his powers or of habitual failure to perform his duties or in pursuance of a resolution requesting his removal passed by two-thirds of the members of the committee:

Provided that if a resolution requesting the removal of the President or the Vice-President is passed by two-thirds of the members of the committee the President or, as the case may be the Vice-President shall be deemed to be under suspension immediately after such resolution is passed;

Provided further that before the State Government notifies his removal, the reason for his proposed removal shall be communicated to him by means of a registered letter in which he shall be called upon to tender within twenty-one days an explanation in writing and if no such explanation is received in the office of the appropriate Secretary to Government within twenty one days of the despatch of the said registered letter, the State Government may proceed to notify his removal.

In a democracy governed by rule of law, once elected to an office in a democratic institution, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law. That a returned candidate must hold and enjoy the office and discharge the duties related therewith during the term specified by the relevant enactment is a valuable statutory right not only of the returned candidate but also of the constituency or the electoral college which he represents. Removal from such an office is a serious matter. It curtails the statutory term of the holder of the office. A stigma is cast on the holder of the office in view of certain allegations having been held proved rendering

him unworthy of holding the office which he held. Therefore, a case of availability of a ground squarely falling within Section 22 of the Act must be clearly made out. A President may be removed from office by the State Government, within the meaning of Section 22, on the ground of abuse of his powers (of President), inter alia. This is the phrase with which we are concerned in the present case.

The proceedings for removal must also satisfy the requirements of natural justice. Second proviso to Section 22 requires that the reason for the proposed removal shall be communicated to the person proceeded against by means of a registered letter and he shall be allowed 21 days for putting up his explanation in writing. And thereafter alone, the State Government may proceed to notify his removal. In between a duty to take decision by due application of mind to the allegations made and the explanation given is implicit and shall have to be read in the provision though not expressly stated therein. The appellant is not charged with habitual failure to perform the duties of President of Municipal Council. He is charged with having abused his powers of President. The vires of the impugned order dated 1.10.1999 have to be tested on the touchstone of the availability of this ground.

The phrase abuse of powers as providing a ground for proceeding under Section 22 is not defined in the Act. Blacks Law Dictionary (Seventh Edition, 1999) gives the meaning of abuse as to depart from legal or reasonable use in dealing with (a person or thing), to injure (a person) physically or mentally, to damage (a thing). In Corpus Juris Secundum (Vol.1, p.402) it is so stated:-

ABUSE.

As Noun- It has been said that the word is not a term of art in the law and that its every day popular sense is well known; but that its proper signification when employed depends upon the context and subject matter. In its largest sense, ill use or improper treatment of another; misuse. In the plural as used with reference to the authority of governmental commissions to correct abuses, the word has been held to mean a disregard of duty imposed by law; any improper use of a right or privilege.

The word abuse as occurring in Section 5(1)(d) of Prevention of Corruption Act, 1947 came up for consideration of this court in M. Narayanan Nambiar Vs. State of Kerala, AIR 1963 SC 1116. This court observed ____ Abuse means mis-use i.e. using his position for something for which it is not intended. That abuse may be by corrupt or illegal means or otherwise than those means. The word otherwise has wide connotation and if no limitation is placed on it, the words corrupt, illegal, and otherwise mentioned in the clause become surplusage, for on that construction every abuse of position is gathered by the clause. So some limitation will have to be put on that word and that limitation is that it takes colour from the preceding words along with which it appears in the clause, that is to say, something savouring of dishonest act on his part. The contention of the learned counsel that if the clause is widely

constructed even a recommendation made by a public servant for securing a job for another may come within the clause and that could not have been the intention of the Legislature. But in our view such innocuous acts will not be covered by the said clause. The juxtaposition of the word otherwise with the words corrupt or illegal means, and the dishonesty implicit in the word abuse indicate the necessity for a dishonest intention on his part to bring him within the meaning of the clause.

To find the meaning of a word or expression not defined in an enactment the courts apply the subject and object rule which means ___ ascertain carefully the subject of the enactment where the word or expression occurs and have regard to the object which the Legislature has in view. Forego the strict grammatical or etymological propriety of language, even its popular use; let the subject or the context in which they are used and the object which the Legislature seeks to attain be your lenses through which look for the meaning to be ascribed. In selecting one out of the various meanings of a word, regard must always be had to the context as it is a fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear. Therefore when the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of, according to lexicographers.. Judge Learned Hand cautioned not to make a fortress out of the dictionary but to pay more attention to the sympathetic and imaginative discovery of the purpose or object of the Statute as a guide to its meaning (See ___ Principles of Statutory Interpretation, Justice G.P. Singh, 7th Edition 1999, pp. 258-259).

The expression abuse of powers in the context and setting in which it has been used cannot mean use of power which may appear to be simply unreasonable or inappropriate. It implies a willful abuse or an intentional wrong. An honest though erroneous exercise of power or an indecision is not an abuse of power. A decision, action or instruction may be inconvenient or unpalatable to the person affected but it would not be an abuse of power. It must be such an abuse of power which would render a Councilor unworthy of holding the office of President. In as much as an abuse of power would entail adverse civil consequences, the expression has to be narrowly construed. Yet again, the expression employed in Section 22 is abuse of his powers or habitual failure to perform his duties. The use of plural - powers, and the setting of the expression in the framing of Section 22 is not without significance. It is suggestive of legislative intent. The phrase abuse of powers must take colour from the next following expression - or habitual failure to perform duties. A singular or casual aberration or failure in exercise of power is not enough; a course of conduct or plurality of aberration or failure in exercise of power and that too involving, dishonesty of intention is abuse of powers within the meaning of Section 22 of the Act. The legislature could not have intended the occupant of an elective office, seated by popular verdict, to be shown exit for a single innocuous action or error of decision.

One of the requirements of the principles of natural justice, as incorporated in second proviso to Section 22, is that the reasons for the proposed removal have to be communicated to the person proceeded against. The purpose of such communication is to enable him to furnish an explanation of his conduct or his act or omission which is likely to be construed as an abuse of power. It is clear that the facts constituting gravamen of the charge have to be communicated. It follows as a necessary corollary therefrom that what has not been communicated or not relied on in the show cause notice as a ground providing reason for the proposed removal cannot be relied upon as furnishing basis for the order of removal. The person proceeded against under Section 22 of the Act has to be made aware of the precise charge which he is required to meet and therefore he must be apprised of the exact content of the abuse of power attributed to him. The authority taking decision must apply its mind also to the explanation furnished by the person proceeded against and this must appear from the order passed under Section 22.

The show cause notice alleged only this much that the Municipal Council had purchased a fogging machine of which payment was to be made but the appellant (as President of the Municipality) instructed the Executive Officer not to make the payment and this resulted in the working of the Municipal Council having been obstructed. The finding arrived at in the impugned order dated 1.10.1999 is different. There is no finding arrived at that the working of the Municipal Council was in any manner obstructed by the appellant having instructed the Executive Officer not to make the payment. The specific stand taken by the appellant in his reply was that the machine had certain inherent defects and was not working properly and hence it was on the advice of the Municipal Council that the appellant had desired the payment not to be made. The finding as to abuse of power is based mainly on the fact that the Executive Officer had prepared a cheque and signed the same on 20.11.1998 and yet the cheque was not presented to the bank resulting in delayed payment to the supplier of the fogging machine. The impugned order also states that the cheque was kept by the appellant in his custody for over two months. These events are subsequent to the date of the show cause notice, i.e. 19.8.1998 as also to the date of appellants reply i.e. 8.9.1998. Thus, briefly stated, the content of abuse of power, as stated in the notice dated 19.8.1998 was-asking the Executive Officer not to make payment while the order dated 1.10.1999 is founded on a subsequent event that in spite of the Executive Officer having prepared and signed the cheque on

20.11.1998, the appellant detained the cheque in his custody for about two months resulting payment being delayed and this amounted to abuse of power. There is no finding recorded in the impugned order that the explanation furnished by the appellant was factually incorrect. A President is supposed to act in the best interests of the Municipality which he is heading. In spite of fogging machine worth lakhs having been found by the Executive Officer to be okay in its trial run, if the President was informed of the machine having certain inherent defects, there was nothing wrong in his asking the Executive Officer not to make the payment unless he was satisfied that the machine was fit for the purpose for which it was being purchased, all the more, when the funds for

purchasing the machine were made available to the Municipality by the District Planning Board. Even accepting the allegations made against the appellant, as contained in the show cause notice, to be correct, his decision to withhold the payment may be said to be an erroneous or unjust decision. For this reason alone the appellant cannot be said to be guilty of an abuse of his powers. If any one suffered by delay in payment it was the supplier and not the Municipality. There is nothing in the show cause notice or the ultimate order to hold how the act of appellant had obstructed the working of Municipal Council or was against the interest of council. We are, therefore, clearly of the opinion that not only the principles of natural justice were violated by the factum of the impugned order having been founded on grounds at variance from the one in the show cause notice, of which appellant was not even made aware of let alone provided an opportunity to offer his explanation, the allegations made against the appellant did not even prima facie make out a case of abuse of powers of President. The High Court was not right in forming an opinion that the appellant was persuading the High Court to judicially review like an appellate court the finding arrived at by the competent authority. The present one is a case where the impugned order is vitiated by perversity. A conclusion of abuse of powers has been drawn from such facts wherefrom such conclusion does not even prima facie flow. The impugned order is based on non-existent grounds. It is vitiated by colourable exercise of power and hence liable to be struck down within the well settled parameters of judicial review of administrative action.

Although the appellant tried to suggest a case of malafides and colourable exercise of power by stating a few facts and inviting a finding that impugned order was passed with an ulterior motive in as much as the appellants election to the office of the President did not suit the power that be and the political bosses of Shri N.K. Arora, the then Principal Secretary, Department of Local Government, State of Punjab, however, we are not entering into that question as it is unnecessary and also because adequate material has not been brought on record and placed before the court so as to undoubtedly arrive at such a finding. However, something has to be said about Shri N.K. Arora, Principal Secretary who initiated the action, heard the appellant and passed the impugned order of removal dated 1.10.1999.

It is interesting to view the present day bureaucrat-politician relationship scenario. A bureaucratic apparatus is a means of attaining the goals prescribed by the political leaders at the top. Like Alladins lamp, it serves the interest of whosoever wields it. Those at the helm of affairs exercise apical dominance by dint of their political legitimacy. The ministers make strategic decisions. The officers provide trucks, petrol and drivers. They give march orders. The minister tells them where to go. The officers have to act upon instructions from above without creating a fuss about it. [Effectiveness of Bureaucracy, The Indian Journal of Public Administration, April-June 2000 at p.165] In the system of Indian Democratic Governance as contemplated by the Constitution senior officers occupying key positions such as Secretaries are not supposed to mortgage there own discretion, volition and decision making authority and be prepared to give way or being pushed back or pressed ahead at the behest of politicians for carrying out commands having no sanctity in law. The Conduct Rules of Central Government Services command the civil servants to maintain at all times absolute integrity and devotion to duty and do nothing which is unbecoming of a Government servant. No Government servant shall in the performance of his official duties, or in the exercise of power conferred on him, act otherwise than in his best judgment except when he is acting under the

direction of his official superior. In *Anirudhsinhji Jadeja* (1995) 5 SCC 302, this court has held that a statutory authority vested with jurisdiction must exercise it according to its own discretion; discretion exercised under the direction or instruction of some higher authority is failure to exercise discretion altogether. Observations of this court in *The Purtabpur Company Ltd.*, AIR 1970 SC 1896, are instructive and apposite. Executive officers may in exercise of their statutory discretions take into account considerations of public policy and in some context policy of Minister or the Government as a whole when it is a relevant factor in weighing the policy but they are not absolved from their duty to exercise their personal judgment in individual cases unless explicit statutory provision has been made for instructions by a superior to bind them. As already stated we are not recording, for want of adequate material, any positive finding that the impugned order was passed at the behest of or dictated by someone else than its author. Yet we have no hesitation in holding that the impugned order betrays utter non-application of mind to the facts of the case and the relevant law. The manner in which the power under Section 22 has been exercised by the competent authority is suggestive of betrayal of the confidence which the State Government reposed in the Principal Secretary in conferring upon him the exercise of drastic power like removal of President of a Municipality under Section 22 of the Act. To say the least what has been done is not what is expected to be done by a senior official like the Principal Secretary of a wing of the State Government. We leave at that and say no more on this issue.

The appeal is allowed. The judgement of the High Court under appeal is set aside. The writ petition filed by the appellant stands allowed. The impugned order dated 1.10.1999 removing the appellant from the Presidentship of the Municipal Council, Rajpura under Section 22 of the Punjab Municipal Act, 1911 is hereby quashed and set aside. The appellant shall be entitled to costs quantified at Rs.10,000/- from the State of Punjab, respondent No.1, which has contested the appellants case throughout. The appellant shall stand forthwith reinstated in the office of the President of Rajpura Municipality for the rest of his term.

.....CJI.

.....J. (R.C. Lahoti)J. (K.G. Balakrishnan) New
Delhi;

July 25, 2001.