Bombay High Court
Bhalchandra Krishnarao Diwanji vs The State Of Bombay on 2 April, 1957
Equivalent citations: (1957) 59 BOMLR 930
Author: Tambe
Bench: Mudholkar, Tambe
JUDGMENT Tambe, J.

1. This is a petition under Article 226 of the Constitution of India by the President of the Municipal Committee, Badnera, for a suitable order or direction, or writ, to quash notification No. 4688-5656-M-XIII, dated October 10, 1956, published in the Madhya Pradesh Gazette dated October 12, 1956.

2. The undisputed facts are that the petitioner is a tax-payer and a voter of the Municipal Committee, Badnera. He was duly elected as the President of the said Committee on May 12, 1954 (The election of the President under the Central Provinces and Berar Municipalities Act is direct). Similarly, the Committee was constituted on May 12, 1954. The Government by notification No. 4638-5656-M-XIII, dated October 10, 1956, issued under Section 53-A of the Central Provinces and Berar Municipalities Act, 1922 (II of 1922), appointed Shri S.S. Chaube, Naib Tahasildar, as the Executive Officer of the Municipal Committee for a period of eighteen months from the date of his taking over charge and directed that Shri Chaube shall exercise and perform powers, duties and functions of the committee, president, vice-president and secretary to the exclusion of the committee, president, vice-president and secretary under certain provisions of the Act mentioned in the said notification. The petitioner has come to this Court under Article 226 of the Constitution to quash this notification.

3. Before we proceed to deal with the application on merits, it is necessary to dispose of certain preliminary objections raised by the respondent. It is contended that the petitioner has no right to file this petition on behalf of the Municipal Committee. Allegations in para. 1 of the petition show that the petitioner purports to make this application on behalf of the Municipal Committee also. This contention is well founded. The petitioner has no right to act on behalf of the Municipal Committee. The petitioner, however, in para. 1 has stated that he was making this petition on his own behalf as well as on behalf of the Committee. The petitioner, therefore, will be allowed to prosecute the petition only on his own behalf, and not on behalf of the Municipal Committee.

4. It is next contended as a preliminary objection that the petitioner has no locus standi to file this petition on his behalf. The action has been taken against the Municipal Committee and the petitioner could have no grievance. It is not possible for us to accept this contention. Apart from the Municipal Committee, the petitioner has also his own grievance. As already stated, the petitioner was elected president directly to the Municipal Committee. The Central Provinces and Berar Municipalities Act provides certain procedure by which a President is prevented from exercising powers and perform duties of his office. If, in fact, he has been prevented from performing his functions as a President in a manner which contravenes the law, then, in our opinion, he has got a grievance and he could come up before us under Article 226 of the Constitution. Dealing with similar matters the Nagpur High Court has entertained petitions filed by Presidents of Municipal

Committees. See Gokal v. The State of M.P. (1950) N.L.J. 509; Tikaram v. Municipal Committee, Sindi (1954) N.L.J. 683; and Rupnarayan Tondon v. State of M.P. (1955) N.L.J. 41. We see no good reason why we should take a view different from that taken in those cases.

5. Coming now to the merits of the petition, it is urged on behalf of the petitioner in the first instance that no opportunity was given to the Municipal Committee prior to the taking of the action, and the Municipal Committee was, therefore, deprived of an opportunity to give any explanations in respect of the charges framed against it. This contention has no force. It has been held by a Division Bench of the Nagpur High Court in President, Municipal Committee, Bhandara v. Deputy Commissioner, Bhandara [1956] Nag. 222 that no prior notice is required to be given to the Municipal Committee before any action is taken under Section 53-A of the Act though a prior notice is required for taking action under Section 57 of the Act. This view has been approved by a Division Bench of this Court to which one of us (Tambe J.) was a party in Miscellaneous Petition No. 330 of 1956, decided on February 21, 1957. We see no reason to take a different view.

6. In the second instance, it is urged that the Government has taken into consideration certain extraneous matters in taking the action, which they were not entitled to do under Section 53-A of the Act, and reference is made in this connection to instances Nos. (i), (ii) and (vi) mentioned in the said notification. As regards the other instances, it is said that these instances, even assuming to be true, do not establish any breach of a duty under the Act evidencing incompetency on the part of the Municipal Committee. This contention, in our view, appears to be well founded. It is urged, however, on behalf of opponent No. 1 that under the Act it is exclusively within the jurisdiction of the State Government to decide whether the Municipal Committee is competent to perform its duties, and if the State Government are of the opinion that the Municipal Committee is not competent, then that question cannot be gone into by a Court of law. It is not possible for us to accept this contention. The material part of Section 58-A of the Central Provinces and Berar Municipalities Act, 1922, reads as below :

If a committee is not competent to perform the duties imposed on it or undertaken by it by or under this Act, or any other enactment for the time being in force and the Provincial Government considers that a general improvement in the administration of the municipality is likely to be secured by the appointment of a servant of the Crown as the executive officer of the committee, the Provincial Government may, by an order stating the reasons therefor published in the Gazette, appoint such servant as the executive officer of the committee for such period not exceeding eighteen months as may be specified in such order.

It will be seen that the condition precedent for taking action under Section 53-A of the Act is the in competeney of the Municipal Committee to perform the duties imposed on it or undertaken by it by or under the Act or any other enactment for the time being in force. It will be further seen that the reasons for the action have to be stated in the Official Gazette. This will show that the action can be taken only when it can be objectively demonstrated from the reasons given by the Government in the notification that the Municipal Committee is not competent to perform the duties imposed on it or undertaken by it by or under the Act or any other enactment for the time being in force. The learned Counsel for opponent No. 2 was not in a position to cite any decision in support of his view.

We, therefore, hold that it is open to us to examine whether the reasons given in the notification establish the incompetency of the Municipal Committee to perform the duties imposed on it or undertaken by it by or under the Act or any other enactment for the time being in force.

7. Reading the notification above, it does appear that the grounds mentioned therein are based on the acts attributed to the Municipal Committee. But when it is read along with the return, it appears that the first, second and sixth grounds are not the acts of the Municipal Committee but are the acts of the President. We will assume for a moment that the President was not justified in acting in the. manner stated in the first, second and sixth instances, and in so acting he has committed a breach of the rules or bye-laws framed under the Act. But then what would justify an action under Section 53-A of the Act is the incompetency of the Municipal Committee and not the wrongful acts of the President. It has not been alleged that the Municipal Committee has failed to take proper action against the President for his alleged wrongful acts. In our opinion, therefore, opponent No. ] was in error in relying on the acts mentioned in the first, second and sixth grounds in taking action under Sections 58-A of the Act.

8. As regards the third ground, it is said that the Municipal Employees' Union held a meeting in the Jai Hind Maidan for their grievances. This meeting turned into a public meeting and the President addressed the meeting and passed a resolution that the members of the Municipal Employees' Union should approach the municipal members in respect of 17 retrenched employees. It is suggested that the Municipal Committee should have taken appropriate action under Section 25-B(i)(c) of the Act. Section 25-B(I)(c) reads as follows :

No officer or servant employed under this Act shall take part in, subscribe in aid of, or assist in any way, any political movement or organisation carried on or run in any part of India or elsewhere relating to the affairs of India.

Now, it will be seen that what is prohibited by Section 25-B(1)(c) is taking part in a political movement or organization carried on or run in any part of India or elsewhere relating to the affairs of India. Now, the meeting which was held was only of the employees. It was for the purpose of ventilating their grievances. This cannot be called " taking part in any political movement "within the meaning of the section. On the facts stated in the notification itself, no breach of Section 25-B (1)(c) is brought out. This ground, therefore, cannot be relied on in support of the action taken under Section 53-A of the Act.

9. As regards the fourth ground, no facts are stated in the notification. In the return, however, opponent No. 1 has stated that the Municipal Committee was indebted to Government and as such the Committee had to submit its budget to the Deputy Commissioner not later than February 15, 1956 (vide Rule 5 of the rules under Sections 86 and 176(2)(iv) of the Act). The Committee actually submitted the budget to the Deputy Commissioner on March 12, 1956, and thus contravened the provisions of Rule 3. Though that is so, that contravention is not made a ground in the notification but something else which is not made out. Thus, this ground also is not established.

10. As regards the fifth ground mentioned in the notification, again the facts are not stated in the notification. The facts stated by opponant No. 1 in their return are that the budget was passed by the General Committee on February 17, 1956. It was not adhered to. On June 11, 1956, the General Committee approved certain alterations in the budget by passing a reappropriation budget as suggested by the President in his letter dated March 12, 1956. The action of the Municipal Committee, according to opponent No. 1, contravened the provisions of Section 84-A of the Act. Section 34-A of the Act provides that no subject once finally disposed of by a committee shall be reconsidered by it within six months unless the recorded consent of not less than three-fourths of its members has been obtained thereto, or unless the Provincial Government has directed its reconsideration. Now, in our view, Section 34-A has no application when we are dealing with a budget as specific and separate provisions arc made relating thereto in the rules framed under Sections 86 and 176(2)(iv) of the Act. These rules will, therefore, govern the case of a budget or reappropriation statements. Note (2) below Rule 6 framed under Sections 86 and 176(2)(iv) of the Act provides that reappropriation statements must be submitted as soon as the necessity for the same is foreseen and not after the expenditure has been taken in hand. Now, if the reappropriation statement is to be submitted as soon as the necessity therefor arises, it cannot be said that though there is necessity the reappropriation statement cannot be passed within six months of the passing of the budget. Now, in the instant case, it has got to be remembered that the Municipal Committee is indebted to the Government. The budget estimates have got to be submitted to Government for their sanction beforehand, and if the Municipal Committee feels the necessity of effecting certain changes in the budget once passed, it would be doing only the right thing in submitting its reappropriation statements as soon as it feels that necessity. It is not the case of opponent No. 1 that any expenditure has been incurred by the Municipal Committee without the reappropriation statements having been sanctioned by the Government. The fifth instance, therefore, is not made out on the facts stated in the return.

11. Since none of the grounds has been made out, we are clear that action under Section 53-A was wholly unjustified.

12. In the result, the petition is allowed with costs and the notification No. 4638-5656-M-XIII, dated October 10, 1956, is quashed. The petitioner will be entitled to a refund of the amount of the security deposit made by him after deducting the costs payable by him.