Allahabad High Court
Iqbal Ahmad vs State Of U.P. And Ors. on 5 May, 1961
Equivalent citations: AIR 1962 All 264
Author: J Sahai
Bench: J Sahai
ORDER Jagdish Sahai, J.

1. The petitioner Sri Iqbal Ahmad is a member of the Town Area Committee, Sikandarpur (hereinafter referred to as the Committee), The said Committee has been superseded by the State Government under Section 36 of the U. P. Town Areas Act (hereinafter referred to as the Act) by means of an order dated 8th of March, 1960, published in the issue of the State Gazette dated 19th March, 1960. The said order reads as follows :

"Whereas the Governor is satisfied that the Town Area Committee, Sikandarpur, district Ballia has persistently made default in the performance Of its duties imposed on it under the U. P. Town Areas Act, 1914 (Act II of 1914), viz., the Committee failed in preparing the assessment list for the years 1958-59 and 1959-60 within the time prescribed by the rules, the Committee failed to utilise the road grant or move for extension of time limit for utilising the same within the time allowed, it failed to finalise its budget estimates for the year 1958-59 by the due date, the actual cash balance prescribed under Rule 58 of the Town Area Account Rules has not been maintained, the sanitary arrangements have been neglected in the Town Area, and further the Committee has also abused its powers;

Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 36 of the said Act, the Governor is pleased to declare the aforesaid committee to be in default and to have abused its powers and to supersede the same with effect from the date of publication of this notification in official Gazette for a period of one year or until the next general elections in Town Areas, whichever is earlier."

2. By a subsequent notification the period of supersession has been extended by another year. The prayer in the petition is for the issue of a writ of certiorari quashing the Order of the State Government dated 8th of March, 1960, for a writ of mandamus commanding the respondents not to in any manner interfere with the functioning of the Committee and for the usual further or other reliefs.

3. Mr. Khare the learned counsel for the petitioner has made three submissions before me which are : (.1) that the Committee was not given an opportunity of furnishing an explanation or showing cause against the order of supersession; (2) that the charges framed are vague; and (3) that Section 36 of the Act is unconstitutional being hit by Article 14 of the Constitution.

4. A counter and a rejoinder affidavit has been filed. It is not necessary to go into the allegations made in the affidavit, the counter affidavit and the rejoinder affidavit because the case can be disposed of on a short point which does not require any detailed investigation of facts. Section 36 of the Act reads as follows :

"36 (1) If, in the opinion of the State Government, a committee persistently makes default in the performance of the duties imposed on it by or under this or any other Act for the time being in force, or exceeds or abuses its powers, the State Government may, by an order published, with the reasons for making it, in the official Gazette, declare that Committee to be in default, or to have exceeded or abused its powers; and supersede it fox a period not exceeding two years to be specified in the order.

(2) When a committee is so superseded, the following consequences shall ensue :

(a) all the members of the committee shall as from the date of the order vacate their offices as such members;

(b) all powers and duties of the committee may, during the period of supersession, be exercised and performed by the District Magistrate;

(c) on the expiration, of the period of supersession specified in the order the committee shall be reconstituted, as though the term fixed under Section 6 had expired, and the persons who vacated their offices under Clause (a) of Sub-section (2) shall not be deemed disqualified for being members."

5. The present petition is essentially one for the issue of a writ of certiorari. The law is well settled that, that writ would not lie to correct the errors of a statutory body which is entrusted with purely administrative functions and does not act judicially or quasi-judidally (See Radheshyam v. State of M. P., AIR 1959 SC 107 at p. 115). The question, therefore, is whether the State Government while exercising powers under Section 36 of the Act has to Act judicially or quasi-judicially or only administratively. The Supreme Court in the case of Province of Bombay v. Khushaldas Advani, AIR 1950 SC 222, laid down certain tests for determining whether the act of a statutory body is quasi-judicial or is administrative. In that case their Lordships relied upon the case of Rex v. Electricity Commissioners, 1924-1 KB 171, which is considered to be the leading ease on the subject. This case was again followed by the learned Judges of the Supreme Court in the case of AIR 1959 SC 107 (Supra). The following passage from the judgment of Aikin, L. J., to the case of 1924-J. KB 171 succinctly summarises the law on the point:

"Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

6. The Judicial Committee of the Privy Council in the case of Nakkuda Ali v. M. F. De S. Jayaratne, 1951 AC 68, after quoting with approval the observations of Atkin, L. J., in 1924-1 KB 171 (Supra), observed as follows :

"As was said by Lord Hewart, C. J., in R. v. Legislative Committee of Church Assembly, (1928) 1 KB 411, when quoting this passage:

"In order that a body may satisfy the required test it is not enough that it should have legal authority to determine questions affecting the rights of subjects; there must be super-added to that characteristic the further characteristic that the body has the duty to act judicially.'"

7. The definition as given by Atkin, L. J., in 1924-1 KB 171 (Supra), was accepted as correct in R. v. London County Council, 1931-2 KB 21.5, and many subsequent cases both in England as also in this country. It was pointed out that there are three requisites each of which must be fulfilled in order that the act of a body may be quasi-judicial act namely that the body of persons (I) must have legal authority (2) to determine questions affecting the rights of parties and (3) must have a duty to act judicially. Chief Justice S. R. Das in the case of AIR 1959 SC 107 (supra), summarised the legal position in the following words:

"The principles deducible from the various judicial decisions considered by this Court in 1950 SCR 621 at p. 725, AIR 1950 SC 222 at p. 260, were thus formulated, namely :

'(i) that if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim mode by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a lis and prima facie and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and (ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially.'"

8. Considering the scheme of the Act and the language of Section 36 it appears to me that the State Government has not to act judicially or quasi-judicially. There is no provision requiring the State Government to call for an explanation from the Committee before superseding it. Section 36 does not also require that the State Government must be satisfied that the Committee has made persistent defaults before superseding it. Actually that section speaks not of satisfaction On the part of the State Government but of a mere opinion that the Committee has made persistent defaults in the dis-charge of its duty. Having carefully scrutinized the language of Section 38 of the Act it appears to me that the State Government while acting under Section 36 of the Act Only discharges administrative duties and does not perform any judicial Or quasi-judicial functions. In this connection the counterpart of Section 36 of the Act in the Municipalities Act (Section 30) may be looked into. That section reads as follows :

"30. If at any time the State Government is, after taking into consideration the explanation of the board, satisfied that the board persists in making default in the performance of any duty imposed upon it by or under this Act or any other enactment or is exceeding or abusing its powers, it, may, by order together with the reasons therefor published in the official Gazette, dissolve the board or supersede it for such period as may be specified.

Explanation :--The period of supersession specified in the order may, if the State Government so considers expedient, be extended from time to time by notification."

9. Though the Act as also the Municipalities Act have been enacted by the same Legislature i.e. the U. P. Legislature) and operate in the field of urban self-government the language of the two sections is in marked contrast with each other. Whereas under Section 30 of the Municipalities Act the State Government has to take into consideration the explanation of the Board there is no such requirement under Section 36 of the Act and whereas Section 30 of the Municipalities Act speaks of "the State Government is .....satisfied" under Section 36 of the Act the mere opinion of the State Government that a Committee has persistently made default is sufficient to enable it to supersede the Committee. It appears to me clear that Section 36 of the Act has left the matter to the subjective determination of the State Government. It is true that the State Government has to form its subjective opinion with regard to an objective fact, namely, whether or not the committee has made persistent default. Mr. Khare has contended that whenever there is to be a determination of a fact which affects the rights of parties the decision must be necessarily a judicial or quasi-judicial decision. I am unable to agree with this submission.

A similar submission was rejected by the Supreme Court in Khushaldas Advani's case, AIR 1950 SC 222 (supra). Kania, C. J., with whom Patanjali Sastri, J., agreed, observed as follows in that decision :

"The respondent's argument that whenever there is a determination of a fact which affects "the rights of parties, the decision is quasi-judicial does not appear to be sound..... It is broadly stated that when the fact has to be determined by an objective test and when that decision affects rights of someone, the decision or act is quasi-judicial. This last statement overlooks the aspect that every decision of the executive generally is a decision of fact and in most cases affects the rights of someone or the other. Because an executive authority has to determine certain objective facts as a preliminary step in the discharge of an executive function, it does not follow that it must determine those facts judicially. When the executive authority has to form an opinion about an objective matter as a preliminary step to the exercise of a certain power conferred on it the determination of the objective fact and the exercise of the power based thereon are alike matters of an administrative character and are not amenable to the writ of certiorari." Fazl Ali, J., also expressed himself in similar words in that case. His Lordship observed as follows:

"The mere fact that an executive authority has to decide something does not make the decision judicial. It is the manner in which the decision has to be arrived at which makes the difference, and the real test is : Is there any duty to decide judicially?.....Dealing with the essential characteristics of a quasi-judicial act as opposed to an administrative act I said at page 719 (of SCR): (at p. 257 o£ AIR):

'.....the two kinds of acts have many common features. Thus a person entrusted to do an administrative act has often to determine questions or fact to enable him to exercise his power. He has to consider facts and circumstances and to weigh pros and cons in his mind before he makes up his mind to exercise his power just as a person exercising a judicial or quasi-judicial function has to

do. Both have to act in good faith. A good and valid administrative or executive act binds the subject and affects his rights or imposes liability on him just as effectively as a quasi-judicial act does. The exercise of an administrative or executive act may well be and is frequently made dependent by the Legislature upon a condition or contingency which may involve a question of fact, but the question of fulfilment of which may, nevertheless, be left to the subjective opinion or satisfaction of the executive authority as was done in the several Ordinances, regulations and enactments considered and construed in the several cases referred to above..... The real test which distinguishes a quasi-judicial act from an administrative act is the third item in Atkin L. J.'s definition namely, the duty to act judicially'."

10. Learned counsel for the petitioner has not been able to point out to me anything in the language of Section 36 or of any other provision in the Act which may show that the State Government has to act judicially or quasi-judicially before superseding a Town Area Committee. The conclusions at which I have arrived find support from the fact that unlike the Municipalities Act which is a Code dealing with all the matters of self-government relating to a Municipality the Town Areas Act is not a code and deals only with certain specified matters. The object and purpose of the Act is to provide a machinery through which better sanitation and lighting in the town can be arranged. Its long title and preamble reads as follows:

Long title : "An Act to make better provision for the sanitation, lighting and improvement of town areas in the United Provinces of Agra and Oudh."

Preamble: "Whereas it is expedient to make better provision for the sanitation, lighting and improvement of town areas in the United Provinces of Agra and Oudh; It is hereby enacted as follows :"

On the other hand the long title and the preamble of the Municipalities Act are as follows :

Long title : "An Act to consolidate and amend the law relating to municipalities in the United Provinces."

Preamble: "Whereas it is expedient to consolidate and amend the law relating to municipalities in the United Provinces, it is hereby enacted as follows:"

11. It is obvious that the domain in which a Municipality operates is much larger than the field in which a Town Area operates. It is also noteworthy that the duties of a committee under the Act are much more limited than those under the Municipalities Act Section 8 of the act which deals with the duties of the committee reads as follows:

"8. The duties of the committee shall be (a) to perform any duty specifically assigned to it by this Act or by any rule or order made under this Act,

(b) generally to render such assistance to the prescribed authority or if none is appointed the district magistrate in the discharge of his functions under this Act, as he may reasonably require."

Clause (b) of Section 8 of the Act clearly reveals that a Town Area Committee has to act in subordination to the prescribed authority or the District Magistrate. The other provisions of the Act clearly show that a Town Area Committee has much less autonomy than a Municipal Board and has to assist and help the district administration instead of acting independently and in exclusive control. Sections 14 and 15 of the Act which deal with taxation also indicate that the prescribed authority or the District Magistrate is at the helm of the affairs of a Town Area and the Committee is only a subordinate body. The ultimate responsibility of the administration of a Town Area is that of the State Government or the prescribed authority or the District Magistrate and the Committee is only an assisting body. Considering the scheme of the Act it is clear that whether or not a Town Area Committee should be allowed to function has been left for the State Government to decide. By the very nature of the limited functions that a Town Area Committee performs it cannot be deemed to be a body independent of the control of the State Government or the prescribed authority or the District Magistrate. It appears to me that it is for this reason that Section 36 of the Act did not require any opportunity of explanation being given to a Town Area Committee and the matter was left to the subjective opinion of the State Government to supersede a Committee or not. That section does not compel the hearing of evidence or the formulating of an opposition. When the State Government supersedes a Town Area Committee it is not determining a question; it is only taking an executive action to withdraw a privilege from the members of the Committee to function as such because it believes, and has reasonable grounds to believe, that they are unfit to be retained. No procedure is laid down by Section 36 or any other provision for securing that the Committee is to have notice of the State Government's intention to supersede it or that there must be an enquiry, public or private, before the State Government acts. The Committee has been given no right to appeal to the State Government or from the State Government.

The scheme of the Act clearly discloses that the State Government while acting under Section 36 of the Act does not function judicially or quasi-judicially. But, that apart, it is well known that the right to stand at an election or to get elected to an office is not a common law right but the creature of the statute creating the office (see Durga Shankar v. Raghuraj Singh, AIR 1954 SC 520). It may also be observed that if the statute which creates an office also provides the methods by which a person elected to that office may be removed, such person receives the office subject to that condition. Inasmuch as the petitioner and other members of the Committee got elected under the condition that the State Government by means of an administrative order could remove them if it was of the opinion that they had persistently defaulted in their duties, they have to bow down to that order and can get no relief in the shape of a writ of certiorari from this Court

12. It was contended by Mr. Khare that in as much as Section 36, requires that the State Government has to give its reasons for the order that it passes it must be held that the Government is expected to act judicially or quasi-judicially. What was said by Chief Justice S. R. Das in Radheshyam's case AIR 1959 SC 107 (supra) with regard to Section 53A of the C. P. and Berar Municipalities Act appears to me to be true with regard to our provision, also (i.e., Section 36 of the Act) that it was enacted by way of public policy in order to allay any misgivings that might arise in the mind of the public that the State Government which was entrusted with large administrative powers acted arbitrarily. Beyond this, to my mind, there was no other purpose in providing for the reasons to be published. Learned counsel for the petitioner placed reliance upon the decision in Nakkuda Ali's case, 1951 AC

66 (supra), in support of this submission that the words "if in the opinion of the State Government, a committee persistently makes default" do not make the Government the sole judge of the persistent default, and placed before me the following passage from that judgment :

"After all, words such as these are commonly found when a legislature or law-making authority confers powers on a minister or official. However read, they must be intended to serve in some sense as a condition limiting the exercise of an otherwise arbitrary power. But if the question whether the condition has been satisfied is to be conclusively decided by the man who wields the power the value of the intended restraint is in effect nothing. No doubt he must not exercise the power in bad faith; but the field in which this kind of question arises is such that the reservation for the case of bad faith is hardly more than a formality. Their Lordships therefore treat the words in Regulation 82 where the Controller has reasonable grounds to believe that any dealer' as imposing a condition that there must in fact exist such reasonable grounds, known to the Controller, before he can validly exercise the power of cancellation."

13. I find nothing in these words to justify the conclusion that the Judicial Committee held that the Controller had to act judicially. In fact the immediate nest sentences in the judgment of their Lordships dispel any such assumption. Those sentences read as follows :

"But it does not seem to follow necessarily from this that the controller must be acting judicially in exercising the power. Can one not act reasonably without acting judicially? It is not difficult to think of circumstances in which the Controller might, in any ordinary sense of the words, have reasonable grounds of belief without having ever confronted the licence holder with the information which is the source of his belief. It is a long step in the argument to say that foe-cause a man is enjoined that he must not take action unless he has reasonable ground for believing something he can only arrive at that belief by a course of conduct analogous to the judicial process. And yet, unless that proposition is valid, there is really no ground for holding that the Controller is acting judicially or quasi-judicially when he acts under this regulation."

14. Even though the law requires the State Government to set reasonably while excreting powers under Section 36 of the Act it does not require it to act judicially or quasi-judicially. In that view of the matter a writ of certiorari cannot be issued. I have already said above that the main relief in the case is for the issue of a writ of certiorari. If that cannot be issued and if the order passed by the State Government cannot be quashed, neither any mandamus nor any other writ, order or direction can be issued as that order would have to stand.

15. With regard to merits there is no substance in submissions NOS.. 1 and 2. From the petitioner's own affidavit it appears that charges were framed and the Committee submitted an explanation. His submission, therefore, is factually incorrect. Nor is the allegation that the charges were vague correct. I have carefully examined them and the same are quite clear and could not have misled the Committee in submitting its explanation. In any case no complaint was made to the State Government that the charges were vague. There are no merits in the first and second submissions of the learned counsel.

16. Corning to the third submission it may be straightaway mentioned that learned counsel has not been able to point out anything which may justify the conclusion that the provisions of Section 36 of the Act are hit by Article 14 of the Constitution. Beyond making a general statement that the provision is unconstitutional learned counsel has not submitted anything in support of his argument. I can find no ground for either holding or believing that Section 36 of the Act is ultra vires the U. P. Legislature. There is thus no substance in this contention also. No other submission was made before me.

17. The result is that the petition is dismissed but there is no order as to costs.