

CASE NO.:
Appeal (civil) 1188 of 2002

PETITIONER:
BALDEV SINGH GANDHI

Vs.

RESPONDENT:
STATE OF PUNJAB AND OTHERS

DATE OF JUDGMENT: 14/02/2002

BENCH:
V.N. Khare & Ashok Bhan

JUDGMENT:

V. N. KHARE, J.

Leave granted.

Municipal Council, Jandiala Guru, district Amritsar, Punjab (hereinafter referred to as 'the Council'), is established and constituted under the provisions of the Punjab Municipal Act, 1911 (hereinafter referred to as 'the Act'). In the last election for constituting the Council, the appellant herein was elected as a Municipal Councilor (in short as 'Councilor') from Ward No. 3 of the Council. In the year 1998, the Council prepared and finalised the house tax assessment list for all buildings within its limit indicating therein the value of the buildings and the amount of tax assessed thereto. The total revenue receipt out of the said levy was nearly ten lacs. However, out of the said gross receipt, a sum of Rs. six lacs was sought to be assessed and recovered as house tax from the houses falling within Ward No. 3 from where the appellant was elected. When the said fact came to the notice, the appellant publicly criticised the house tax assessment list as being illegal and arbitrary. A writ petition was also filed before the Punjab and Haryana High Court challenging the said house tax assessment list as prepared and finalised by the Council. It is alleged that the then Chairman of the Assessment Committee nourished ill-will against the appellant and, therefore, he made a complaint to the government for his removal from the Council. It is alleged that on the basis of the said complaint, the State government served a show cause notice on the appellant calling upon him to show cause as to why he should not be removed from the office of the Council under clause (e) of sub-section (1) of Section 16 of the Act. The charges leveled against the appellant are extracted below:

" Executive Officer Nagar Council, Jandiala Guru has reported vide his office letter No. 99/1111 dated 14.9.99 that Nagar Council acting as per new directions and after completing the survey for House tax had decided 90% cases of the House Tax by 30.3.90. Nobody has opposed the house tax except you from the whole city. You have also issued a pamphlet in which you have made allegation that the Nagar Council is collecting the house tax as per its own wish and you have

appealed to the residents that the objections regarding house tax be given to you and your M.C. colleagues between 9 AM to 1PM on 9.4.99 in the office of the Nagar Council so as appropriate steps can be taken to stop the arbitrariness of the Nagar Council. You have also got it announced through speaker in the city and you stayed in the office of the Nagar Council to hear the objections regarding house tax. Only 10-15 persons met you. Due to this the Nagar Council had suffered great difficulty in collection of house tax from the people.

Due to the facts as mentioned above Nagar Council Jandiala Guri has suffered difficulty while collecting the house tax and as a result of which financial loss has been caused to the Nagar Council. Therefore you have violated Punjab Municipal Act, 1911. Therefore, there is a proposal to remove you from the membership of Nagar Council, Jandiala Guru u/s. 16 (1) (e) of the Punjab Municipal Act, 1911."

On receipt of the said show cause notice, the appellant furnished an explanation. In the said explanation the appellant denied that he had either flagrantly abused his position as a member of the Council or committed any misconduct as a result of which the Council was put to any financial loss. It was also alleged therein that the show cause notice was mala fide. It was also stated therein that it was out of sheer ill will that his constituency was picked up for arbitrary and excessive taxation and, therefore, as a representative of the said ward, he protested against the house tax assessment list prepared by the Committee. The government of Punjab by an order dated 25.8.1999 removed the appellant from the office of the Council under clause (e) of sub-section (1) of Section 16 of the Act. Aggrieved, the appellant preferred a writ petition before the High Court of Punjab and Haryana which was dismissed. It is against the said judgment and order of the High Court, the appellant has preferred this appeal by way of special leave petition.

On argument of learned counsel for the parties, the questions that arise for our consideration are these

- 1) whether the charges leveled against the appellant fall within the ambit of clause (e) of sub-section (1) of Section 16 of the Act ;
- 2) whether acts attributed to the appellants has any nexus with the financial loss alleged to be suffered by the Council ; and
- 3) Whether the findings recorded by the State government while removing the appellant from the office of the Council are outside the scope of the charges leveled against the appellant.

Since question nos. 1 and 2 are overlapping, we proceed to decide both the questions together.

In order to deal with these questions, it is necessary to split the relevant portion of the charge leveled against the appellant, which are broadly as under :

"Executive officer

(a) You are also issued a pamphlet in which you have made allegation that the Nagar Council is collecting house tax as per its own wish and you have appealed to the residents that the objections regarding house tax be given to you and your M.C. colleagues for taking appropriate steps to stop the arbitrariness of the Nagar Council. You also get it announced through loud speaker in the city..

(b) Due to the aforesaid action, Nagar Council suffered great difficulty in collection of house tax from the people and as a result of which the Municipal Council was put to financial loss. Therefore, you have violated the provisions of the Act".

A perusal of the aforesaid charge against the appellant shows that what was attributed to the appellant was that he through pamphlets and also on loudspeaker made a protest against the house tax assessment list prepared by the Council. The question, therefore, arises whether such a charge would constitute 'misconduct' within the meaning of clause (e) of sub-section (1) of Section 16 of the Act.

Section 16 of the Act which empowers the State government to remove any member of a committee runs as under:

"16. Power of the State Government as to removal of members:- (1) The State Government may, by notification [remove any member of a committee other than an associate member] :

- (a) ..
- (b) ..
- (c) ..
- (d) ..

(e) if, in the opinion of the State Government he has flagrantly abused his position as a member of the committee or has through negligence or misconduct been responsible for the loss, or misapplication of any money or property of the committee".

'Misconduct' has not been defined in the Act. The word 'misconduct' is antithesis of the word 'conduct'. Thus, ordinarily the expression 'misconduct' means wrong or improper conduct, unlawful behaviour, misfeasance, wrong conduct, misdemeanour etc. There being different meaning of the expression 'misconduct', we, therefore, have to construe the expression 'misconduct' with reference to the subject and the context wherein the said expression occurs. Regard being had to the aims and objects of the statute. The appellant herein is an elected municipal councilor to a democratic institution i.e. local body. The aim and object of the Act is to make better provisions for administration of municipalities. The municipality is a democratic institution of self governance consisting of local people and for the local people and by the local people. The prime object of the local body is to serve the local people and to provide amenities and service to the people residing within the municipality. As a representative of the public it is the duty of an elected representative to see that the public of his constituency are not burdened with excessive and arbitrary levy. No doubt, a municipal commissioner holds a statutory office in a municipal council, but no statutory code of conduct in respect of

municipal councilors has been enacted. However, it is a different question whether such a law could be framed as to restrict the freedom of speech and expression of a municipal councilor. However, it must be borne in mind that the appellant was not an employee or a servant of the municipal council and also never held any office of profit in the municipal council. Every citizen, inasmuch as a municipal councilor, has a freedom of speech and expression under Art.19(1)(a) of the Constitution which includes fair criticism of the law or any executive action. Freedom of speech and expression is guaranteed in our democratic republic both in legislature as well as in local bodies and, therefore, a legislator or a municipal councilor legitimately can express his views in regard to what he thinks to be in public interest. A legitimate exercise of right of speech and expression including a fair criticism is not to be throttled.

It is no doubt true that a citizen or a municipal councilor must obey the law duly passed by the legislature or municipal council. The observance of rule of law by all citizens and municipal councilors is one of the basic requirements of working of a democracy. The rule of law which is obeyed not only by the officers and public servant of the State or local bodies, but by all the citizens and holders of elected offices, is a pre-condition of a healthy and successful democracy. No responsible person in a democracy could incite the people to disobey the rule of law duly enacted. But situations may arise where responsible persons or those who hold elected offices may feel that it is their duty to criticise the law either promulgated by the State or the municipal council as illegal, arbitrary or ultra vires and against the public interest and invite the people to come for discussion on the subject. Can such a conduct be attributed as a 'misconduct' ?

Sir Alfred Denning L. J. in the Hamlyn Lecture on Freedom of Mind and Conscience, Freedom Under the Law, at p. 35 stated thus:

" Every one in the land should be free to think his own thoughts to have his own opinions and to give voice to them, in public or in private, so long as he does not speak ill of his neighbour, and free also to criticise the government or any party or group of people, so long as he does not incite anyone to violence".

Douglas J. in Terminiello Chicago (1948) 337 US 1, stated thus:

"It is only through free debate and free exchange of ideas that government remains responsive to the will of the people and peaceful change is effected."

Holmes and Brandeis JJ. in American Communications Association vs. Douds (1949) 339 US 382, "that the greater danger to democracy lies in the suppression of public discussion and that ideas and doctrines thought harmful or dangerous are best taught with words".

Here, the appellant criticised the house tax assessment list and asked the tax payer to come to him for sorting out the grievances. The appellant as an elective representative of the Ward held his office in trust for the public and was expected to exercise his functions in the interest of the public. This being the case, his criticism of the house tax assessment list was in furtherance of what he believed to be in public interest. Keeping in view the aim, object and the scheme behind the provisions of the Act and also in the context the expression 'misconduct' has been used, such a criticism by the appellant against the house tax assessment list cannot be construed as 'misconduct'. We are, therefore, of the view that the criticism by the appellant of the house tax assessment list prepared and finalised by the Council did not constitute 'misconduct' within the meaning of the expression 'misconduct' occurring in clause (e) of sub-section (1) of Section 16 of the Act.

Then again question arises whether is there any rational connection between the act attributed to the appellant and the alleged loss of revenue suffered by the municipal council. It may be remembered that the connection between the legislation and object of legislation must be real and proximate and not far-fetched.. The Constitution of India never contemplated that freedom of speech & expression guaranteed under Art. 19(1)(a) which includes a fair criticism of law and executive actions could be infringed on the ground of remote or speculative ground, otherwise all the guaranteed liberties under the Constitution are liable to be infringed on one excuse or the other. What is to be seen is the act attributed to the appellant must have direct and real connection with the alleged loss in revenue suffered by the municipal council, and unless there is such a connection, it cannot be held that loss in revenue was the result of the act attributed to the appellant. It is not the case of the State Government that the appellant incited tax payers not to pay taxes or incited people to resort to violence against house tax assessment list. A fair criticism of the house tax assessment list by the appellant has no bearing on the alleged loss in revenue of the Council. According to us, what is contemplated in clause (e) of sub-section (1) of Section 16 of the Act is that the loss of revenue must be a direct result of misdemeanour of a municipal councilor. We, therefore, find that there is no rational nexus between the act attributed to the appellant and the alleged loss in revenue to the Council. Before we part with this question, we are deposed to go into the question whether, in real sense, was there any loss in revenue to the Council by the alleged criticism of house tax assessment list. The charge against the appellant was that because of his acts, there was difficulty in realisation of house tax and, therefore, loss in revenue was caused to the Council. It is not disputed that house tax assessment list was a new list and 85% of the tax payers paid the house tax and merely an insignificant number of tax payers did not pay the house tax. It, therefore, does not mean that house tax dues were lost and became unrecoverable. In fact, there was no loss in revenue and only recovery of taxes were deferred. It is not disputed that arrears of tax can be recovered as arrears of land revenue by the Collector. In that view of the matter, we are of the view that, in fact, there was no loss in revenue to the Council. The appellant was exercising only his democratic right of fair criticism of the house tax assessment list prepared and finalised by the Council and such an act had no rational nexus with the alleged loss in revenue suffered by the Council. We are, therefore, of the view that the charge leveled against the appellant was totally outside the scope of clause (e) of sub-section (1) of Section 16 of the Act.

Reliance was placed on behalf of the respondents in the case of M. H. Devendrappa vs. Karnataka State Small Industries Development Corporation 1998 (3) SCC 732, for the proposition that even if the appellant while exercising his fundamental right, as guaranteed under Section 19 (1) (a) of the Constitution, yet he was supposed to protect the interest of the Council. We are of the view that the said decision has no application in the present case. In the said case, the petitioner was an employee of the Karnataka State Small Industries Development Corporation. Being an employee he sent letters to the governor and other authorities against the Chairman of the Corporation attributing serious allegation against him and indulged in party politics. He also issued press statements against the Chairman for his illegal activities. For such an act, the petitioner was dismissed from service. The writ petition against the order of dismissal from service was dismissed which was upheld by this Court on the ground that Rule 22 of the Service Rule provided that any employee who commits a breach of rules or does anything detrimental to the interest or prestige of the Corporation or guilty of any activity of misconduct or misbehaviour, shall be liable to one or more of the penalties. But that is not the case here. The appellant as a representative of public owed a duty not merely to the municipal council, but also to the public of his constituency. He held the office in trust for them. Since as an elected representative of public he was expected to safeguard the interest of the public, and while doing so it cannot be said he committed any misconduct.

Insofar as the third question is concerned, we have already extracted the charge leveled against the appellant. The State government after receiving the explanation offered by the appellant removed him from the office of the municipal council after recording the following finding:

" It is amply clear from the record that Shri Baldev Singh had almost invited the people against the house tax assessment. He has gone to the extent of voicing his negative feelings through distribution of pamphlets. He had called upon the people to lodge their protests before his vis-à-vis- the house tax cases. An elected representative is required to be sober and responsible when it comes to public interest. He is expected to maintain the dignity and decorum and keep the interest of the municipality above personal consideration. In the instant case, Shri Baldev Singh Gandhi has certainly acted rashly and irresponsibly. The actions of Shri Baldev Singh Gandhi were clearly aimed at injuring the financial interests of the municipality. He thus renders himself actionable under section 16(1)(e) of the Punjab Municipal Act, 1911. Accordingly, he is hereby removed from the membership of the council."

The charge leveled against appellant was that because of his criticism of the house tax assessment list, the Council suffered loss in revenue. Whereas, no finding has been recorded by the State government that because of the act of the appellant, the Council has suffered any loss in revenue. In absence of such a finding,, the finding recorded in the impugned order of removal passed by the State Govt. is totally outside the scope of charge leveled against the appellant, and for that reason also, the order of removal of the appellant is not sustainable in law.

In view of what has been stated above, we are of the view that the order of removal against the appellant being beyond the scope of clause (e) of sub-section (1) of Section 16 of the Act was illegal.

In that view of the matter, the judgment and order under challenge is set aside and the appeal is allowed. Consequently, the writ petition filed by the appellant also stands allowed. We direct that the respondent (s) shall pay Rs. 5,000/- as costs, to the appellant.

J.
(V. N. Khare)

J.
(Ashok Bhan)

February 14, 2002