



RAJASTHAN HIGH COURT

HIGH COURT OF JUDICATURE FOR RAJASTHAN

BENCH AT JAIPUR

सत्यमेव जयते

S.B. Civil Writ Petition No. 18149/2024

Mohd. Soyab Khatri Son Of Shri Mohd. Iliyas Khatri, Aged About 34 Years, Resident Of Ward No. 28, Mohalla Vyaparian, Nawalgarh, Distt. Jhunjhunu (Rajasthan) Presently Working As Chairman, Municipal Board, Nawalgarh.

-----Petitioner

Versus

1. State Of Rajasthan, Through Its Secretary, Local Self Department, Government Of Rajasthan, At Government Secretariat, Jaipur.
2. The Director and Special Secretary, Director Local Bodies, Situated At G-3, Rajmahal Residency Area, Civil Lines Phatak, C Scheme, Jaipur.
3. Office Of The Municipal Board, Nawalgarh- Jhunjhunu Through Its Commissioner, Situated At Nawalgarh, Jhunjhunu, Rajasthan 333001

-----Respondents

For Petitioner(s) : Mr.Sandeep Singh Shekhawat, Adv. with Mr.David Mehla, Adv.

For Respondent(s) : Mr.SPS Rajawat, AGC with Mr.Manoj Kumar, Adv. & Ms.Pooja Dixit, Adv. for Mr.G.S. Gill, AAG.

HON'BLE MR. JUSTICE AVNEESH JHINGAN

Order

RESERVED ON :: :: :: **29/11/2024**

PRONOUNCED ON :: :: :: **18/12/2024**

1. The Chairman of the Municipal Council, Nawalgarh has filed this petition challenging the notices dated 22.11.2024, pleading political vendetta to be the basis for issuance of show cause notices (for brevity 'SCN').
2. The brief facts are that the petitioner was elected as Municipal Counsellor from Ward No.28 of Municipal Board Nawalgarh and was elected as Chairperson of the Municipal Board, Nawalgarh. After holding the preliminary enquiry the



two impugned SCN were served upon the petitioner to show cause against the allegations mentioned therein.

3. The present petition is filed pleading apprehension that the petitioner would be targeted and suspended on the basis of the impugned SCN.

4. Learned counsel for the petitioner argued that the decision on the issues instanced in the SCN were taken by the Empowered Committee but the petitioner has been singled out for issuing SCN. Submission is that the lay out plans were prepared by the experts and the petitioner was Chairman of the Municipal Council. The contention is that the basis of the enquiry has not been supplied to the petitioner. Decision of this Court in **D.B. Special Appeal Writ No.252/2024** titled as **State of Rajasthan & Ors. Vs. Himanshu** dated 08.04.2024 is relied to argue that the writ petition against the show cause notice should be entertained.

5. Before proceeding further it would be appropriate to give summary of allegations in the SCN:-

(i) Three private persons having land in Khasra No.1332 were granted permission for commercial construction by reducing the width of the road whereas the permission could have been granted only after leaving 60 ft. wide road.

(ii) Freehold lease to the residential plots was issued leaving the road width of 25 ft. Subsequently the lay-out plan was modified increasing the width of the road to 30 ft. but proportionate area was not reduced from plots.

(iii) Considering the colony in khasra No.1778 to be settled before 31.12.2021, permission for residential use under



Section 90A of the Rajasthan Land Revenue Act, 1956 (hereafter 'the Act') was issued whereas only two plots in the area were constructed. The permission in violation of rules and the circular was granted by Committee at instance of Petitioner. The Empowered Committee could have granted the permission in cases where colonies have been developed before 17.06.1999 with minimum 10% built up area and maximum 70% saleable area. In case of colonies having built up area less than 10% and saleable area is of more than 70% the matter was required to be referred to the State Government by the local authority.

(iv) The petitioner during his tenure surrendered the land allotted to him and got a bigger plot allocated for himself.

(v) Lastly, lay out plan was sanctioned for vacant land of three private persons in Khasra No.125 to 129 measuring 4.85 hectare situated in Village Mohabbatsar Tehsil Nawalgarh in violation of the statutory provisions wherein the requirement was that before 31.12.2021, more than 10% of the colony should be populated.

6. Grievance raised is that the petitioner belongs to a particular political party and with the formation of Government by rival political party in Legislative Assembly, the petitioner has been targeted.

7. The democracy in India is deep rooted and exist even at the grass root level. The democracy and rule of law are interdependent. In a country governed by rule of law the statutory provisions provide safeguard for the rights of the citizens. The key requirements of rule of law are access to the



Court, free and fair trial and a fair notice of exercise of powers by the Authorities. The rule of law opposes arbitrary exercise of power. Each political party whether ruling or in opposition has an important role in democracy.

8. The political vendetta cannot be permitted to be used as a shield to curb initiation of proceedings under the statute. In case, initiation of proceedings at stage of issuance of SCN are quashed on a bald statement of a political vendetta, the result would be that even in cases where as per law the proceedings can be initiated, the initiation would be nipped at threshold. The occasion to proceed in accordance with law for scrutinizing the act done shall not arise as the political party to which the petitioner belongs would be no longer in power either in Municipal Council or at the State level. The derivative being that while in power the act would not be checked and successor will not be able to do it being from an opposite party, the conduct and the act done during tenure would never be scrutinized.

9. It would be relevant to quote following paragraphs from decision of the Supreme Court in **Maru Ram Vs. Union of India** reported in **[(1981)1 SCC 107]**. The relevant paras are quoted:-

“63. The jurisprudence of constitutionally canalised power as spelt out in the second proposition also did not meet with serious resistance from the learned Solicitor General and, if we may say so rightly. Article 14 is an expression of the egalitarian spirit of the Constitution and is a clear pointer that arbitrariness is anathema under our system. It necessarily follows that the power to pardon, grant remission and commutation, being of the greatest moment for the liberty



of the citizen, cannot be a law unto itself but must be informed by the finer canons of constitutionalism. In the *International Airport Authority*((1979)3 SCC 489) case, this Court stated:

The rule inhibiting arbitrary action by Government which we have discussed above must apply equally where such corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise, and it cannot act arbitrarily and enter into relationship with any person it likes at its sweet will, but its action must be in conformity with some principle which meets the test of reason and relevance.

This rule also flows directly from the doctrine of equality embodied in Article 14. It is now well settled as a result of the decisions of this Court in *E.P. Royappa v. State of Tamil Nadu* and *Maneka Gandhi v. Union of India* that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory; it must not be guided by any extraneous or irrelevant considerations, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law.

Mathew, J. in *V. Punnenn Thomas v. State of Kerala* observed:

The Government, is not and should not be as free as an individual in selecting the recipients for its largesse. Whatever its activity, the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal. If we





excerpt again from the Airport Authority case: (SCC pp. 504 & 505 paras 10 & 11)

Whatever be the concept of the rule of law, whether it be the meaning given by Dicey in his "The Law of the Constitution" or the definition given by Hayek in his "Road to Serfdom" and "Constitution of Liberty" or the exposition set forth by Harry Jones in his "The Rule of Law and the Welfare State", there is as pointed out by Mathew J., in his article on "The Welfare State Rule of Law and Natural Justice" in "Democracy Equality and Freedom".

"Substantial agreement in Juristic thought that the great purpose of the rule of law notion is the protection of the individual against arbitrary exercise of power, wherever it is found". It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the Executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of the power involves affectation of some right or denial of some privilege.

The discretion of the Government has been held to be not unlimited in that the Government cannot give or withhold largesse in its arbitrary discretion or at its sweet will. It is insisted, as pointed out by Prof. Reich in an especially stimulating article on "The New Property" in 73 Yale Law Journal 733, "that Government action be based on standards that are not arbitrary or unauthorised". The Government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licence only in favour of those having grey hair or belonging to a particular political party or professing a particular religious faith. The Government is still the Government when it acts in the matter of granting largesse and it cannot act





arbitrarily. It does not stand in the same position as a private individual. It is the pride of our constitutional order that all power, whatever its source, must, in its exercise, anathematise arbitrariness and obey standards and guidelines intelligible and intelligent and integrated with the manifest purpose of the power. From this angle even the power to pardon, commute or remit is subject to the wholesome creed that guidelines should govern the exercise even of presidential power.

64. Speaking generally. Lord Acton's dictum deserves attention: Letter to Mandell (later Bishop) Creighton, April 5, 1887 Historical Essays and Studies, 1907. I cannot accept your canon that we are to judge Pope and King unlike other men, with a favourable presumption that they did no wrong. If there is any presumption it is the other way, against the holders of power, increasing as the power increases. Likewise, Edmund Burke, the great British statesman gave correct counsel when he said: All persons possessing a portion of power ought to be strongly and awfully impressed with an idea that they act in trust, and that they are to account for their conduct in that trust to the one great Master. Author, and Founder of society."

10. The allegation in the impugned notices involve factual aspects and are based upon the record. The petitioner without filing a response to the notices filed the writ petition. It cannot be lost sight that to rule out arbitrariness after holding preliminary enquiry SCN were issued.

11. The contention that the petitioner has been singled out for issuance of SCN is pre-mature. The matter is being scrutinized and as things unfold, scope of proceedings can be enlarged.

12. The aggrievance that documents or the enquiry reports have not been supplied to the petitioner need not be



addressed at this stage. Petitioner till date has not even made a request for supply of material relied upon. At the cost of repetition, the petitioner has filed this writ petition without filing the response to the SCN.

13. At this stage the details as to what was the role of the petitioner in issuing permissions and getting a bigger plot allotted for himself by surrendering an earlier plot should not be gone into as it would influence proceedings. It would not be appropriate at this stage in the writ petition to pre-judge the issue.

14. Reliance of counsel for the petitioner on the decision of the State of Rajasthan Vs. Himanshu (supra) is of no avail. The challenge before the Division Bench was to the stay of the suspension order. In the facts and circumstances of that case, stay order was upheld. In case in hand, no order has been passed as on date.

15. Before concluding it would be appropriate to note that in the writ petition it is pleaded that the petitioner apprehends being targeted as the Chairman of the Municipal Council Jhunjhunu and Pradhan of Chirawa have been suspended. Suffice to say that the writ petition cannot be entertained only on apprehension, in absence of any *prima facie* basis.

16. The writ petition is dismissed.

(AVNEESH JHINGAN), J

HS/Chandan/134

Reportable:- Yes